

MDS Alert

Federal Agency Updates: The OIG Sets its Sights on Nursing Homes

While CMS is ramping down its focus on infection control, OIG suggests nursing homes need better regulation.

The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) has realigned its sights on nursing homes and skilled nursing facilities (SNFs) and the vulnerability of Medicare beneficiaries who are residents.

OIG lays some blame for the lack of oversight and transparency on pandemic safety measures.

Background: Every year, the OIG makes scores of recommendations, advising the Department of Health and Human Services (HHS) on ways to tighten up its programs, improve documentation, and cut down on fraud and abuse. On Oct. 27, OIG released the 2021 edition of its top 25 unimplemented recommendations for HHS. This year, the agency lists 12 Medicare-focused problems that need fixing across Parts A, B, C (Medicare Advantage), and D.

Reminder: The top 25 list is compiled from findings garnered from OIG's extensive audits and evaluations throughout the previous year; this report covers data through Dec. 31, 2020. However, the report also points out that this period aligns with the early stages of the pandemic, and despite offering advice and recommendations, the "COVID-19 response and recovery efforts" remain "a top priority for HHS [agencies], including OIG," the national watchdog cautions.



In fact, "as of September 21, 2021, OIG had 58 audits and evaluations underway related to COVID-19 response and recovery, which may result in recommendations that appear in future editions. OIG's completed and ongoing work related to COVID-19 is available via the COVID-19 Portal on our website," the agency says.

Note the Top 2 Recommendations

Nursing homes have struggled mightily during the COVID-19 public health emergency (PHE), with infection control leading to spikes in cases and the spread of the virus among residents. OIG oversight showed that infection control survey backlogs and survey suspensions caused significant harm.

OIG recommended that the Centers for Medicare & Medicaid Services (CMS) revise its policies and "clarify expectations for States to complete backlogs of standard surveys and high priority complaint surveys that were suspended in the early months of the pandemic," the report indicates. According to OIG, CMS' progress on this recommendation is inconclusive, and that "continued assessment of and improvements to infection control surveys" are still needed to rectify this issue.

Another area of concern revolves around the longstanding problems with neglect and abuse of both Medicare and Medicaid beneficiaries in SNFs. Reports abound that identify thousands of cases of beneficiary abuse and neglect. Some of the data comes from diagnosis codes that point to potential injuries from abuse, OIG suspects. Medical records also show signs that these vulnerable patients were abused or neglected while "additional OIG work identified cases of potential abuse of Medicare beneficiaries in hospice care and that hospices failed to act in some instances," the report mentions.



OIG shows that CMS has taken some action such as utilizing emergency room claims of Medicare patients to identify issues to combat this problem. CMS also plans to overhaul its survey agencies and revise policies to better track incidents, the report says.

On the hospice side, "CMS is working to establish a hospice complaint hotline-related regulation and continues to strengthen guidance for surveyors to report crimes to local law enforcement agencies," according to the report. However, CMS has not acted on the OIG recommendation to revise the Medicare Conditions of Participation (CoPs) and use them as a reporting mechanism for hospices to thwart abuse and neglect, the report suggests.

The OIG has a variety of other unimplemented recommendations for Medicare Parts A and B. Specifically, the report says that CMS should:

- Connect Medicare hospice payments to beneficiary care needs and quality of care;
- Overhaul the inpatient rehabilitation facility (IRF) payment system;
- Reform the hospital wage-index system;
- Recoup \$1 billion from inpatient hospital claims that incorrectly upcoded malnutrition diagnosis codes;
- Study the 3-night requirement at SNFs; and
- Utilize legislative processes to cut Part B drug costs.

Resource: Read the OIG's Top Unimplemented Recommendations: Solutions To Reduce Fraud, Waste, and Abuse in HHS Programs at <https://oig.hhs.gov/reports-and-publications/compendium/files/compendium2021.pdf>.