

## MDS Alert

### Government Updates: Pay Attention to These CMS, OIG Changes

#### **New rules and announcements affect nondiscrimination requirements and rights enforcement.**

Various government offices are releasing information on changes large and small. Get the highlights you need to know, without scouring the internet, with this rundown.

#### **Know These Nondiscrimination Rollbacks**

If you updated your facility's information, including the website, education materials, and more to reflect the Centers for Medicare & Medicaid Services (CMS) 2016 changes in nondiscrimination, you may need to adjust them once again.

The current administration may be rewriting those changes.

**Why?** Back in 2016 CMS made a number of changes, including requiring providers to furnish "taglines" in the top 15 languages spoken by patients and addressing discrimination against transgender people seeking medical care and based on sex stereotypes.

Now, CMS, under the Trump administration, is pulling back those requirements. The previous final rule on the topic "introduced confusing and costly notice and tagline requirements that were not required by law, were inconsistent with tagline requirements required by other components of the Department and ... provided relatively minimal benefit to [Limited English Proficiency] individuals," CMS now says in a new proposed rule published in the June 14 Federal Register.

And the rule spends much time citing lawsuits, Department of Justice memos, and other materials that assert that gender or perceived gender is not a protected class against discrimination.

See the 50-page rule here: [www.govinfo.gov/content/pkg/FR-2019-06-14/pdf/2019-11512.pdf](http://www.govinfo.gov/content/pkg/FR-2019-06-14/pdf/2019-11512.pdf). Comments are due by Aug. 13.

#### **OIG Publishes Review of Unreported Incidents of Abuse or Neglect**

The U.S. Department of Health and Human Services (HHS) Office of the Inspector General (OIG) conducted a review of Medicare claims for nursing home residents who went to an emergency room and received a "high-risk" diagnosis code in 2016, whether surveyors and facilities reported these incidents to appropriate law enforcement, and whether and how the Centers for Medicare & Medicaid Services (CMS) tracked and enforced tracking and recording these incidents. The OIG suspected that SNF residents were being neglected and abused but the situations were not being reported or properly tracked and recorded.

Their findings suggest that there have been multiple breakdowns in protocols by facilities, surveyors, and CMS.

"We determined that an estimated one in five high-risk hospital ER Medicare claims for treatment provided in calendar year 2016 were the result of potential abuse or neglect, including injury of unknown source, of beneficiaries residing in a SNF," says OIG in a Report in Brief.

"We determined that SNFs failed to report many of these incidents to the Survey Agencies in accordance with applicable Federal requirements. We also determined that several Survey Agencies failed to report some findings of substantiated abuse to local law enforcement," OIG says.

"Lastly, we determined that CMS does not require all incidents of potential abuse or neglect and related referrals made

to law enforcement and other agencies to be recorded and tracked in the Automated Survey Processing Environment Complaints/Incidents Tracking System,” OIG says.

OIG added that CMS, surveyors, and facilities are all responsible for “preventing, detecting and combating elder abuse” and each must be accountable to make that happen.

CMS provided written comments on the OIG draft report, agreeing with the drafted recommendations, as well as providing details of which actions they have already taken and their plans for ensuring potential abuse or neglect of Medicare beneficiaries in SNF environments are identified and reported, OIG says.

You can read the whole June 2019 report here: <https://oig.hhs.gov/oas/reports/region1/11600509.pdf>.