

## OASIS Alert

### Marketing: USE AGGREGATE DATA OR AGGRAVATE THE FEDS

Outcome-based quality improvement provides a treasure-trove of information a home health agency can use to spruce up its marketing efforts, but agencies that use OBQI data willy-nilly could receive a nasty visit from a barrage of regulators.

The risk-adjusted OBQI reports are for internal HHA and surveyor use only and don't meet privacy requirements for public use, the **Centers for Medicare & Medicaid Services** warns in a recently issued OBQI Q&A. "Reports with patient identifiable information (i.e., adverse event and patient tally reports) MUST be protected against release to the public," CMS stresses.

It's imperative for agencies to use only aggregate patient data to stay on the right side of privacy laws, advises attorney **Larri Short** with

Arent Fox Kintner Plotkin & Khan in Washington. Any data used for marketing "must be de-identified," she says.

A myriad of mandates require protection of patient-specific information, Short notes, including the home health conditions of participation, state laws and the Health Insurance Portability and Accountability Act. HIPAA's privacy provisions are scheduled to go into effect next April.

But agencies probably will be most interested in using only aggregate data for their marketing plans anyway. "Nobody should be making a judgment based on one patient," Short says. "The point is where you stand overall in comparison to your competitors."

"With a little creativity and after checking with attorneys," savvy agencies easily can show where they excel over their competition with aggregate data, adds **Terri Ayer** with **Ayer Associates** in Annandale, VA. "Using broad groupings is OK."

Health-related rules won't be the only ones HHAs have to worry about when structuring their marketing plans, Short points out. Truth in advertising law violations could bring the **Federal Trade Commission** and state equivalents down on agencies that can't back up their marketing claims.

But even FTC oversight can't keep competitors from making misleading but perfectly legal statements in their advertising materials, Short notes. For example, an agency with 40 outcomes significantly below the national norm, but one above the norm, can tout that one outcome as a badge of excellence, she says.

And because the OBQI reports themselves must be kept private, agencies can't directly check on many of their competitors' OBQI claims. Federal and state authorities probably can, however, or at least ask surveyors to check on them in their stead, Short predicts.

CMS may make OASIS data even more useful for marketing purposes if it risk-adjusts adverse event reports and makes locally and regionally adjusted comparisons available. CMS says in the Q&A that it is working on the adverse event reports and is considering the local and regional components of the OBQI reports.