

OASIS Alert

OBQI: BEWARE OBQIS TRIPLE THREAT

While your outcome-based quality improvement reports can provide you with a treasure-trove of helpful information, they also can provide surveyors, the **HHS Office of Inspector General** or a litigation attorney with enough information to stop you in your tracks.

Agencies rushing to use OBQI reports either for internal quality improvement efforts or to prepare for future surveys should focus some of their efforts on the risk management aspects of the new process, experts warn. Knowing the sources of potential problems can help HHAs head them off at the pass.

Experts identify three risk areas HHAs should watch for:

1. Malpractice attorneys or other prosecu-torial types could use OBQI reports to show trends or instances of "below standard" outcomes, says attorney **Deborah Randall** with **Arent Fox Kintner Plotkin & Kahn** in Washington.

There is no federal statutory protection against a discovery request seeking copies of the OBQI reports the agency has chosen to download, she says, and HHAs will find little state law protection either, Randall notes.

Agencies that choose to download and print these reports need to be concerned with who has copies and what they do with them, Randall stresses. Reports should not be "broadly circulated within the agency," she advises. The quality improvement person at the agency should be the one to address problem behaviors and patterns and "come back with the plan for improvement," she tells **Eli**.

2. These reports provide the OIG "an opportunity to get in the mix" and address quality of care as it has with other provider types, Randall predicts.

The OIG is "enamored with the idea of substandard care as a False Claim," contends Burtonsville, MD healthcare attorney **Elizabeth Hogue**. And in essence, with the OBQI reports the government is "pinpointing substandard care," she argues, making it easy for the OIG to come in and challenge payment for that care.

3. Surveyors will use the reports "before the kinks are worked out," Randall worries.

Even though the **Centers for Medicare & Medicaid Services** says surveyors aren't going to use OBQI reports to mark a deficiency on the survey, they will use the reports to select the agencies and patients to examine, Randall explains.

Providers should understand the changes taking place and expect surveyors to look at reports "before going into the field" and to focus on patients with problems noted in the reports, Randall warns. And if that's all the surveyors focus on, "by definition, you'll always lose."

Once surveyors write up deficiency statements, they become public records available at the state health department to anyone who wants to see them, including attorneys wanting to raise the issue of substandard care, Hogue warns. So it's important that statements of deficiency not include OBQI material or references to it, experts agree.

If the OBQI material is included on deficiency statements, any state statutory protection vanishes, Hogue contends. Generally, states want to encourage health care providers to engage in quality improvement efforts so they may give some statutory protection from litigation discovery to materials a provider uses for this purpose, she says.

But a home health agency usually isn't protected, Randall reports. Most state statutes are designed to protect hospitals from having to divulge reports from committees looking into morbidity/ mortality issues, and these statutes exclude

small providers, she says. Unless an agency is sure the state law addresses the quality improvement process, it shouldn't expect protection, she warns.