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Compliance Corner: Long-Term Care and the OIG Work Plan: As HHS Sharpens its Focus, Providers Should Set Their Sights on Compliance

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In the fall of 2014, the Department of Health and Human Services Office of Inspector General released its 2015 Work Plan, which highlighted HHS's compliance focus areas in the upcoming year.

As in past years, areas of focus cover a range of providers that are reimbursed by Medicare, Medicaid and other federal programs, and feature compliance priorities ranging from hospital billing to Medicare Advantage-Prescription Drug Program requirements to oversight of Affordable Care Act (ACA) initiatives.[1]

[1] The Work Plan, which took effect in October 2014, also lists CMS-related legal and investigative actions and addresses areas of compliance focus in more than 100 HHS-administered programs, including Administration for Children and Families, Centers for Disease Control and Prevention, Food and Drug Administration, and National Institutes of Health. For further information on all aspects of the Work Plan, a full copy is available at https://oig.hhs.gov/reports-and-publications/archives/workplan/2015/FY15-Work-Plan.pdf.

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As in past years, the Work Plan places a heavy emphasis on issues impacting long-term care providers, reinforcing the scrutiny regulators have directed toward an industry that has, in some cases, displayed high levels of fraud and abuse.

In light of the continued regulatory focus on long-term care and the emphasis on new areas of inquiry in the 2015 Work Plan, long-term care providers should be familiar with the Work Plan, and should review and update their compliance plans as necessary.

Background—Work Plans and Long-Term Care Compliance

OIG Work Plans

OIG Work Plans are released annually, and they summarize new and ongoing areas of regulatory review and indicate areas of focus for OIG in the coming year. Work Plans signal to health-care stakeholders areas where government audits, investigations and evaluations may be likely to occur.

Where providers are not operating within the parameters described in a Work Plan (in addition to failing to meet other necessary requirements, whether or not named in the Work Plan), they may be subject to assessments, civil monetary penalties and administrative sanctions.

In the 2015 Work Plan, released on Oct. 31, 2014, areas of focus are divided by payor and topic, and new issues are highlighted.

While the 2015 Work Plan spans a range of providers and areas of review, this article will focus on issues relating to long-term care providers, and will include compliance considerations for those looking to

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strengthen policies and procedures in light of the 2015 Work Plan.

Long-Term Care Compliance

As ''long-term care'' is broadly defined to include a range of services and supports necessary to meet chronic care needs, compliance issues under the long-term care umbrella touch a variety of providers.

Although compliance concerns for long-term care providers can vary by provider type, certain themes cut across the spectrum; for instance:

- Because long-term care providers often employ caregivers who visit patients on a regular basis—and in many cases, in patient homes—such providers can have significant influence over patient choice, which can be abused in instances where providers stand to benefit from patient referrals.
- Because certain long-term care services are provided outside of an institutional or clinic setting, there are greater opportunities for providers to submit false claims, engage in ''upcoding'' or otherwise commit billing fraud, as institutional checks are absent in home settings.
- Long-term care providers are often caring for vulnerable patient populations, which require sustained and generally costly care; thus, regulators have a strong interest in promoting quality of care and eliminating fraud, waste and abuse in this area.

A discussion of areas of focus for long-term care providers in the Work Plan follows, with an emphasis on focus areas added in 2015.

Medicare

The Work Plan states that OIG aims to reduce waste in connection with Medicare Part A and Part B, and to focus on quality measures applicable to long-term care providers. In addition, OIG hopes to reduce improper Medicare payments, evident in its focus on fraudulent billing practices.

In the 2015 Work Plan, HHS added an area of focus on adverse and temporary harm events in post-acute care for Medicare beneficiaries receiving care in long-term care hospitals (LTCHs). The Work Plan states that LTCHs are the third most common type of post-acute facility, accounting for around 11 percent of Medicare costs for post-acute care.

Adding LTCH adverse event reviews to the Work Plan—which already provides for monitoring adverse events in inpatient rehabilitation facilities—will help HHS assess the factors that contribute to adverse events in these facilities, and will aid in the determination of whether these incidents are preventable.

Although HHS added no new areas of focus to the 2015 Work Plan for nursing homes, issues featured in past Work Plans remain on the agenda for the coming year.

OIG will continue to focus on issues relating to nursing home billing, including instances of upcoding (or billing for services at a higher level than required or provided) and questionable billing patterns for Part B services during nursing home stays (for instance, billing Part B for services provided to nursing home residents for stays not paid under Part A).

Further, OIG will continue its inquiries into hospitalizations of Medicare beneficiaries residing in nursing homes as a result of conditions thought to be manageable or preventable in a nursing home setting.

As is the case with nursing homes, the Work Plan did not feature any new focus areas for home health agencies in 2015. However, OIG has indicated that it will continue to assess potential areas of fraud associated with home health providers.

In 2015, OIG will continue to focus on questionable billing practices in home health agencies, and to keep a close watch on newly enrolling providers that have been designated by the Centers for Medicare & Medicaid Services as at ''high risk'' for fraud, waste and abuse.

Medicaid Compliance

For providers reimbursed by the Medicaid program, the Work Plan includes new and recurring areas of focus for home health agencies and other community-based long-term care. In general, new focus areas relate to initiatives introduced under the ACA.

The Work Plan provided that OIG will review payments made to states under the Community First Choice (CFC) state plan option, added by the ACA. The CFC state plan option permits states to provide home- and community-based services and supports to individuals who otherwise would have required institutional care. Review in this area will focus on whether payments are both proper and allowable.

In addition, OIG will review the expenditures states claimed under the Balancing Incentive Program (BIP). Also introduced under the ACA, the BIP provides enhanced federal matching funds for eligible expenditures on long-term services and supports.

In general, funds provided under the BIP are contingent on eligible states agreeing to make certain structural changes designed to increase access to long-term services and supports. Under the BIP, states are required to use funds to provide new or expanded offerings of such services.

OIG also stated that it will focus on transfers of Medicaid beneficiaries from group homes and nursing facilities to hospital emergency rooms. The Work Plan notes that high transfer rates can correlate to poor quality of care—which can, in turn, result in significant financial outlays.

In line with prior years, OIG will focus on billing and payment issues in adult day health-care services providers and continuing day treatment mental health services providers. Among other things, OIG will ensure that care was actually provided where claims were submitted and will determine whether adequate support and documentation exists to back up claims.

Finally, OIG will continue reviewing health screening records of Medicaid home health agency workers to determine whether they were screened in accordance with federal and state requirements.

Long-Term Care Compliance Tips

Long-term care providers looking to improve compliance in light of the 2015 Work Plan should aim to prevent avoidable incidents of patient harm, train staff on responding to emergencies and addressing patient

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needs, and ensure compliance with federal and state regulations.

Specifically, long-term care providers are encouraged to ensure a robust compliance program that features, among other things, the following:

- Policies and procedures that address clinical quality measures critical to caring for vulnerable patients, such as wound care, medication adherence, reducing preventable injuries and health-care-acquired conditions, and understanding advance directives.
- Auditing protocols to ensure that services are actually provided where claims are made, and to protect against fraud, waste and abuse generally.
- A plan of care for each patient, and caregiver and staff training on adherence to such plans.
- Training for caregivers and other staff on how to address urgent situations, including appropriate use of 911 calls, and how to generally monitor patients for changes in needs and behaviors that could signal a decline in health.
- In cases where long-term care is provided in a facility (e.g., a nursing home or post-acute care facility), buildings that meet all relevant requirements, including those imposed by the Americans with Disabilities Act.
- Training for in-home caregivers on assessing home environments, focusing on unsafe situations and potential patient abuse; addressing potential hazards in a patient's home; and procedures for conducting in-home visiting, including wearing proper identification and ensuring appropriate interactions with patients.
- Policies and procedures specific to provider type, which are updated as necessary to ensure compliance with regulatory changes (for example, home health agencies should ensure that a certifying physician or non-physician practitioner has a face-to-face encounter with a patient receiving a home health benefit; and long-term care facilities should have emergency response policies and procedures, including those addressing patient evacuation).

Review and Fortify Compliance Policies

While a comprehensive compliance plan cannot by itself insulate a provider against regulatory scrutiny, having a working understanding of the 2015 Work Plan and updating policies and procedures as necessary to address regulators' priorities for the year ahead would be a prudent course of action for any long-term care provider.

In addition, ensuring that staff are trained properly on policy and procedure adherence is an important component of overall compliance.

With 2015 already under way, OIG's monitoring of focus areas described in the Work Plan has begun. For long-term care providers, the work of reviewing and fortifying compliance policies and procedures in light of the Work Plan should not be very far behind.