



Client Alert

Contact Attorney Regarding
This Matter:

Richard E. Gardner III*
404.873.8148 - direct
404.873.8149- fax
richard.gardner@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

OIG Publishes Final Supplemental Compliance Program Guidance For Nursing Facilities

On September 30, 2008, the Office of Inspector General (“OIG”), continuing its efforts to promote voluntary compliance programs for the health care industry, published the final version of its Supplemental Compliance Program Guidance for Nursing Facilities. A draft of the Supplemental Compliance Program Guidance (“CPG”) was issued in April of this year. The new CPG is intended to enhance rather than replace the original nursing facility CPG, which was published in March of 2000.

The new CPG was developed in response to significant changes in the nursing facility industry, including changes in the delivery and receipt of reimbursement for health care services, evolving business practices, and changes in the Federal enforcement arena. It contains new compliance recommendations and an expanded discussion of risk areas that are particular to nursing homes, including risks areas related to nursing facility quality of care, claims submissions, the Federal anti-kickback statute, HIPAA privacy and security, and other areas. The OIG notes that, while neither the original CPG nor the Supplemental CPG presents a model compliance program, the two documents collectively provide a set of guidelines that should be considered when developing or reevaluating a compliance program.

The original nursing facility CPG addressed the fundamentals of establishing a compliance program, focusing on what it deemed to be the seven essential elements of an effective program. These elements include the following: (1) implementing written policies, procedures, and standards of conduct; (2) designating a compliance officer and compliance committee; (3) conducting effective training and education; (4) developing effective lines of communication; (5) enforcing standards through well-publicized disciplinary guidelines; (6) conducting internal monitoring and auditing; and (7) responding promptly to detected offenses and developing corrective action.

In the new Supplemental CPG, the OIG places significant emphasis on quality of care. As the OIG points out, “[n]ursing facilities that fail to make quality a priority, and consequently fail to deliver quality health care, risk becoming the target of governmental investigations.” The quality of care risk areas identified by the OIG include the following: (1) the implementation of comprehensive resident care plans that are sufficient; (2) the proper management of pharmaceutical services; (3) the use of psychotropic medications, including the use of chemical restraints and the avoidance of unnecessary drugs; and (4) the protection of residents from abuse, both from staff and other residents.

The natural focus of an effective compliance program is the submission of accurate claims to the government for reimbursement. The OIG cites examples of false or fraudulent claims including “claims for items not provided or not provided as claimed, claims for services that are not medically necessary, and claims where there has been a failure of care.” With respect to the proper submission of claims, the new CPG highlights the following as potential risk areas for nursing homes: (1) the classification of residents into the RUG assignments for proper case-mix reporting; (2) the delivery of therapy services, including proper utilization with respect to RUG classifications, the potential for overutilization of services billed to Part B under consolidated billing, and underutilization of services under Part A PPS; (3) screening for individuals and entities excluded from the federal health care programs; and (4) billing for the provision of restorative and personal care services.

The CPG also analyzes potential areas of risk for nursing facilities with respect to the application of the federal anti-kickback statute. The anti-kickback statute is a criminal prohibition against any remuneration intended to induce or reward the referral or generation of business that is reimbursed by a federal health care program. The OIG’s concerns for nursing facilities in this area include the following: (1) the provision of free goods or services as a potential kickback for or inducement of federal health program business; (2) the use of service contracts to hide payments for referrals; (3) certain discount arrangements; (4) relationships between hospices and nursing homes designed to induce nursing facility referrals to hospices; and (5) reserved bed payments by hospitals.

Other risk areas discussed in the new CPG include the application of the Stark law, which places prohibitions on physician self-referrals, the prohibition against supplementation of Medicare and Medicaid payments, patient choice under Medicare Part D, and compliance with HIPAA privacy and security requirements.

While the OIG recognizes that there is no “one size fits all” compliance program for nursing facilities, it recommends that each facility adapt the objectives and principles described in the CPGs to its own circumstances. For nursing facilities with existing compliance programs, the new CPG will provide a roadmap for updating compliance plans. For facilities developing a compliance program, the supplemental CPG together with the original nursing facility CPG should provide a basis for inclusion of specific components and risk areas in a newly established compliance program.

The new Supplemental CPG is available here:

http://oig.hhs.gov/fraud/docs/complianceguidance/nhg_fr.pdf

*Special thanks to Jessica Grozine for her assistance with the preparation of this article. Ms. Grozine is a recent graduate of the Georgia State University School of Law and an employee of Arnall Golden Gregory LLP in the firm’s health-care practice group. Ms. Grozine is not yet admitted to the State Bar of Georgia and is waiting her bar examination results.

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