Client Alert

Contact Attorney Regarding This Matter:

H. Carol Saul
404.873.8694 - direct
carol.saul@agg.com

Jason M. Sosnovsky
404.873.8116 - direct
jason.sosnovsky@agg.com

OIG Finds Significant Non-Compliance With Federal Requirements For Medicaid Home and Community-Based Services in Assisted Living Facilities

The 1915(c) waiver is a tool used by many states' Medicaid programs to expand long-term care options for beneficiaries and reduce spending on nursing home care. Assisted living facilities (ALFs) can provide a housing alternative particularly when supplemented by home and community-based services (HCBS) for beneficiaries residing in ALFs. The 1915(c) waiver permits Medicaid programs to cover HCBS for the elderly and disabled, such as case management, homemaker services, personal care and home health aides. In order to qualify for a 1915(c) waiver, a state must provide assurances that certain safeguards will be implemented and standards will be met, such as the requirement of a written plan of care and licensure or certification of providers.

In a report released December 2012, OEI-09-08-00360, the Department of Health and Human Services, Office of Inspector General (OIG), found widespread non-compliance with those mandatory standards and safeguards. Heightened survey scrutiny of HCBS is the likely result.

How the Study was Conducted:

The OIG collected claims data from 35 Medicaid programs and selected the 7 states with the highest numbers of beneficiaries residing in ALFs and receiving HCBS: Georgia, Illinois, Minnesota, New Jersey, Oregon, Texas and Washington. They then randomly selected 150 beneficiaries and reviewed state survey agency inspection reports for the ALFs as well as plans of care for the 150 beneficiaries for the year 2009.

Summary of Findings:

The cost for HCBS in the 35 states was $1.7 billion annually. (No estimation was made of the cost of care if the beneficiaries had been institutionalized). In the 7 focus states, the OIG found that 77% of the beneficiaries received HCBS in ALFs which were cited for non-compliance with at least one licensure or certification requirement. Nine percent of beneficiary records lacked a plan of care, and 42% of the plans of care did not specify the frequency of services. In the 5 states requiring documentation of goals and interventions, 69 of the 105 plans of care (66%) lacked these elements. Where required, 48% of plans of care were unsigned by the beneficiaries or their representatives. Notably,

CMS started from the premise that states' survey findings were accurate in all respects.

What will be the Impact?

Based on its findings of widespread non-compliance, the OIG recommended that CMS issue guidance to states emphasizing the need to comply with federal requirements for HCBS under 1915(c) waivers. CMS concurred and further stated that it will also more closely examine quality measures in reviewing 1915(c) applications. As a result, providers of HCBS in ALFs should expect an increased frequency of audit, with a focus on compliance with plan of care requirements, including documentation of frequency of services and goals and interventions to meet those goals, and signatures on plans of care.