2017 OIG Work Plan and Current Compliance Topics - Home Health and Hospice

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"A good hockey player plays where the puck is. A great hockey player plays where the puck is going to be."
— Wayne Gretzky
Hockey Center (1978–1999)
Objectives

1. Place the 2017 OIG Work Plan in the context of other HHS OIG integrity initiatives
2. Understand new, continued and deleted elements of the 2017 OIG Work Plan that impact Home Health and Hospice providers
3. Review recent regulatory and investigatory areas of focus for Home Health and Hospice
4. Provide tips on how to reduce compliance risks associated with these areas of focus

Federal OIGs

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Council of the Inspectors General on Integrity and Efficiency

detection and prevention of fraud, waste, abuse, and mismanagement of the government programs and operations
HHS Integrity

OIG: Internal and External, including contractors

CMS Contractors
CERT, MAC, NBI MEDIC, O&E MEDIC, PERM, RAC, SMRC, ZPIC, Audit MICs

State Medicaid Entities

OIG Regularly Reported Guidance
Rules

Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Office of Inspector General’s Civil Monetary Penalty Rules

A Rule by the Health and Human Services Department on 12/07/2016
Dates: These regulations are effective on January 6, 2017.
Effective Date: 01/06/2017
Document Type: Rule
Document Citation: 81 FR 88334

Civil Monetary Penalties Inflation Adjustment

AGENCY: Department of Justice.
ACTION: Interim final rule with request for comments.
SUMMARY: In accordance with the provisions of the Bipartisan Budget Act of 2015, the Department of Justice is adjusting for inflation civil monetary penalties assessed or enforced by components of the Department.
DATES: Effective date: This rule is effective August 1, 2016.
Data

Program for Evaluating Payment Patterns Electronic Report (PEPPER)

OIG Strategic Plan
OIG Strategic Goals

• Fight fraud, waste and abuse
• Promote quality, safety and value
• Secure the future
• Advance excellence and innovation

OIG Strategic Priorities

• Build on Medicare Fraud Strike Force teams, using data analytics
• Implement and refine self-disclosure protocols
• Use exclusions and referrals for debarment to hold fraud perpetrators accountable
• Focus on provider quality to participate in HHS programs – especially abuse or grossly deficient care in LTC and home- and community-based settings
• Prioritize work on billing and payment errors
OIG Strategic Priorities (cont’d)

• Assess care coordination programs and other new payment mechanisms intended to promote value versus volume

• Security of PHI and electronic medical records

Semiannual Report to Congress
Home Health

“Success” Stories

- Miami HHA owner sentenced to 20 years in prison and $26.4 million payment for kickbacks to doctors, patient recruiters, and staffing groups in return for referring beneficiaries to his home health agencies.

- DC HHA owner billed Medicaid for services that were not provided, creating phony time sheets, patient files, and employment files.

Home Health

Home Health Areas of Focus

- Medicare Compliance Review of Home Health VNA
  - Net overpayments of $314,000 for calendar years (CYs) 2011 and 2012 extrapolated to $15.5 million
  - Beneficiaries were not homebound; beneficiaries did not require skilled services; documentation from the certifying physicians was missing or insufficient to support the services the Agency provided

- Nationwide Analysis of Common Characteristics in OIG Home Health Fraud Cases
Hospice

No news....

is good news!

OIG Work Plan
OIG Work Plan - Overall

Factors in Prioritization

- Mandatory requirements for OIG reviews, as set forth in laws, regulations, or other directives;
- Requests made or concerns raised by Congress, HHS management, or the Office of Management and Budget;
- Top management and performance challenges facing HHS;
- Work performed by partner organizations;
- Management’s actions to implement OIG recommendations from previous reviews; and
- Timeliness.

OIG Work Plan - Hospice

- **New:** Medicare Hospice Benefit Vulnerabilities and Recommendations
- **Concern:** Summarize OIG work with hospices and recommend improvements

**TIPS:** Be aware of past OIG findings with respect to Hospice: General Inpatient Care, NOE and CoTI accuracy, basic eligibility and other technical requirements; conduct ongoing reviews of these high-risk areas
OIG Work Plan - Hospice

- **Restated:** Review of Hospice Compliance with Medicare Requirements
- **Concern:** Medicare payments being made for services for which documentation does not meet Medicare requirements

**TIPS:** Be aware of past OIG findings with respect to Hospice: General Inpatient Care, NOE and CoTI accuracy, basic eligibility and other technical requirements; conduct ongoing reviews of these high-risk areas.

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OIG Work Plan - Hospice

- **New:** Frequency of in-home RN visits to ensure quality of care
- **Concern:** RNs are required to make in-home visits at least once every two weeks to assess hospice aide services AND to ensure that IDT services are meeting patient’s needs

**TIPS:** Review systems and performance for RN scheduling and visit documentation.
OIG Work Plan - Hospice

Items from 2016 Work Plan dropped in 2017:
- General Inpatient Care

OIG Work Plan – Home Health

- **Continued**: Home Health **Prospective Payment System Requirements**
- **Concern**: questionable documentation in support of billing – especially for newly enrolled providers

**TIPS**: conduct regular reviews of clinical documentation and order processes; incorporate findings into ongoing staff and referral source training on homebound status and skilled need at both start of care and ongoing.
OIG Work Plan – Home Health

- New: Comparing HHA Survey Documents to Medicare Claims Data
- Concern: State agencies conducting surveys do not have Medicare claims data to compare to information provided by agency

TIPS: NA

OIG Work Plan – Personal Care/Community Services

- New: Medicare payments for Chronic Care Management
- Concern: CCM cannot be billed during the same service period as home health, hospice and transitional care management

TIPS: Educate and coordinate with providers who bill for CCM
OIG Work Plan – Personal Care/Community Services

- **New:** Data brief on Fraud in Medicaid Personal Care Services
- **Concern:** Increase awareness of fraud, abuse and/or neglect in Medicaid PCS based upon 2012 report

**TIPS:** see 2012

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OIG Work Plan – Personal Care/Community Services

- **New:** State Risk Assessment of Medicaid-Only Providers
- **Concern:** State assignment of Medicaid-Only providers into risk categories and their screening based upon those categories may not meet intended goals

**TIPS:** If your sole payor sources is Medicaid, expect additional scrutiny of initial applications and increased focus on employee screening requirements (health/background)
OIG Work Plan – Personal Care/Community Services

- Continued: Oversight and Effectiveness of Medicaid Waivers
- Concern: Ensure States are using funding effectively and efficiently, and that CMS is providing sufficient oversight

TIPS: If providing services under a Medicaid Waiver program, anticipate added scrutiny of all provisions of contracts

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OIG Work Plan – Personal Care/Community Services

- Continued: Medicaid Adult Day Health Services
- Concern: Ensure eligibility, plans of care and service delivery meet Federal requirements

TIPS: If providing ADH services, conduct focused reviews of eligibility, POC technical requirements, and that service provision and POC are in synch
OIG Work Plan – Personal Care/Community Services

- Continued: Room and board costs under HCBS Waiver Programs
- Concern: Ensure payments for HCBS Waiver services do not include room and board costs

TIPS: If providing HCBS Waiver services, review costs allocated to HCBS to ensure that room and board costs are not included

OIG Compendium of Unimplemented Recommendations
Ensuring Quality in Nursing Home, Hospice, and Home- and Community-Based Care

Hospice

- CMS should change regulations or pursue a legislative change, if necessary, to establish a hospital transfer payment policy for early discharges to hospice care (2013)
- CMS should reform payments to reduce the incentive for hospices to target beneficiaries with certain diagnoses and those likely to have long stays (ALFs - 2015)

Ensuring Quality in Nursing Home, Hospice, and Home- and Community-Based Care

Home Health

- CMS should promulgate regulations to reduce significant variation in States’ personal care services (PCS) laws and regulations by creating or expanding Federal requirements and issuing operational guidance for claims documentation, beneficiary assessments, plans of care, and supervision of attendants (2012)
- CMS should promote minimum standards in background check procedures (2015)
Ensuring Quality in Nursing Home, Hospice, and Home- and Community-Based Care

Home Health (cont’d)

- CMS should complete a process that would allow the claims processing system to interface with State survey agency systems to identify, on a prepayment basis, home health agency claims without accepted Outcome and Assessment Information Set (OASIS) data submissions (2014)
- CMS should implement the HHA surety bond requirement (2012)

Rules
Civil Monetary Penalties Inflation Adjustment

Indexes CMPs to the Consumer Price Index (CMI)

- One-time “Catch-Up” from last adjustment
- Effective August 1, 2016
- False Claims (adj. from 1986)
  - Prior: $5,500 to $11,000
  - Now: $10,781 to $21,563
- Anti-Kickback (adj. from 1986)
  - Prior: $11,000
  - Now: $21,563

Other Guidance
OIG Review of Hospice Documentation

Method:
• Used records from a GIP review
• 565 patients receiving GIP level of care in 2012

Notice of Election
Key Finding #1:  35% of election statements were incomplete
• 19% - Did not specify Medicare
• 12% - Did not accurately state waiver of certain Medicare benefits
• 9% - Did not state that hospice care is palliative rather than curative
• 4% - No clear statement on patient revocation or discharge by hospice
OIG Review of Hospice Documentation

Physician Certifications
Key Finding #2: 14% of physician certifications were deficient
10% - Narrative absent or insufficient
5% - Missing attestation of examination or record review

Mitigation:
- Review text of NOE and CTI to ensure required language is in place
- Initial and Recertification
- Physician and NP
- Educate physicians on requirements for a narrative
- Establish audit and monitoring processes to ensure compliance
Data Brief: Common Characteristics in OIG Home Health Fraud Cases

5 Common Characteristics = High percentages of:
• No recent visits with supervising physician
• Primary diagnosis of diabetes or hypertension
• Beneficiary has claims from multiple HHAs (potential recruiter action)
• Multiple HHA admissions (masking long LOS)

Data Brief: Common Characteristics in OIG Home Health Fraud Cases

27 Geographic Hotspots
• Arizona
• California
• Florida
• Illinois
• Louisiana
• Michigan
• Nevada
• New York
• Oklahoma
• Pennsylvania
• Texas
• Utah
Data Brief: Common Characteristics in OIG Home Health Fraud Cases

Outlier Thresholds

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>National Median</th>
<th>Outlier Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>No recent visit from supervising physician</td>
<td>22.6%</td>
<td>62.5%</td>
</tr>
<tr>
<td>Diabetes or hypertension diagnosis</td>
<td>10.1%</td>
<td>45.1%</td>
</tr>
<tr>
<td>Claims from multiple HHAs</td>
<td>6.3%</td>
<td>25.9%</td>
</tr>
<tr>
<td>Readmission shortly after discharge</td>
<td>5.6%</td>
<td>19.1%</td>
</tr>
</tbody>
</table>

Investigative Advisory: Medicaid Fraud and Patient Harm Involving Personal Care Services

Patient Harm Examples

- Patient requiring one-on-one supervision: death by exposure
- Neglect by relative serving as PCS attendant: hospitalized for severe dehydration and malnourishment
- Beneficiary asked to sign blank time sheets
Investigative Advisory: Medicaid Fraud and Patient Harm Involving Personal Care Services

Fraud Scheme Examples
• False time sheets
• Excluded employees
• Beneficiary left locked in car while attendant went shopping with a friend

Recommendations
• Establish minimum Federal qualifications and screening standards for PCS workers, including background checks
• Require States to enroll or register all PCS attendants and assign them unique numbers
• Require that PCS claims identify the dates of service and the attendant who provided the service
• Consider whether additional controls are needed
Alert: Improper Arrangements and Conduct Involving HHAs and Physicians

Findings
• Payment for referrals
• Falsely certifying patients as homebound
• Billing for medically unnecessary services
• Billing for services not rendered

Raising the Bar – Other Hot Topics

Part D Review

PEPPER

Yates Memo
PEPPER Report
(Program for Evaluating Payment Patterns Electronic Report)

PEPPER Report – Home Health

• Average Case Mix
• Average Number of Episodes
• Episodes with 5 or 6 Visits
• Non-LUPA Payments
• High Therapy Utilization Episodes
• Outlier Payments
PEPPER Report - Hospice

• Live Discharges No Longer Terminally Ill
• Live Discharges Revocations
• Live Discharges LOS 61-179 days
• Long Length of Stay
• Continuous Home Care in Assisted Living Facility
• Routine Home Care in Assisted Living Facility
• Routine Home Care in Nursing Facility
• Routine Home Care in Skilled Nursing Facility
• Single Diagnosis Coded
• No General Inpatient Care or Continuous Home Care

CMS: Part D Payment Responsibility

<table>
<thead>
<tr>
<th>Year</th>
<th>% Beneficiaries w/ Part D – 4 Categories*</th>
<th>% Beneficiaries w/ Part D – Maint. Drugs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>15.8%</td>
<td>71.3%</td>
</tr>
<tr>
<td>2014 (Prior Auth)</td>
<td>7.6%</td>
<td>50.8%</td>
</tr>
<tr>
<td>2015</td>
<td>4.8%</td>
<td>62.1%</td>
</tr>
<tr>
<td>2016</td>
<td>3.6%</td>
<td>62.7%</td>
</tr>
</tbody>
</table>

* 4 Categories: Analgesic, Anti-nausea, Laxative, Anti-anxiety
MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION
THE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION
THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
THE ASSISTANT ATTORNEY GENERAL, TERRORISM, HITE, AND NA
THE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES TRUSTIES
ALL UNITED STATES ATTORNEYS

FROM: Sally Quillian Yates
Deputy Attorney General

SUBJECT: Including Accountability for Corporate Wrongdoing

Yates Memo

DOJ Guidance

Resources
The Old Standards

- **OIG Compliance Program, Guidance for Hospices**
  http://oig.hhs.gov/authorities/docs/hospicx.pdf

- **OIG Compliance Program, Guidance for Home Health Agencies**
  http://oig.hhs.gov/authorities/docs/cpghome.pdf

- **HHS OIG Guidance for Health Care Boards – Updated 2015**
  http://oig.hhs.gov/compliance/compliance-guidance/docs/Practical-Guidance-for-Health-Care-Boards-on-Compliance-Oversight.pdf

Resources

- **HHS OIG Work Plan for FY2017**

- **HHS OIG Semi-Annual Report for the period ending September 30, 2016**

- **HHS OIG Strategic Plan 2014 - 2018**
Resources

- The Yates Memo
  http://www.justice.gov/dag/file/769036/download

- The Yates Memo graphic
  http://www.thebroadcat.com/blog/2015/9/14/the-yates-memo-visualized

- Hospices Should Improve Their Election Statements and Certifications of Terminal Illness
  https://oig.hhs.gov/oei/reports/oei-02-10-00492.asp

- Common Characteristics in OIG Home Health Fraud Cases
  https://oig.hhs.gov/oei/reports/oei-05-16-00031.asp

- PEPPER Resources
  https://www.pepperresources.org/

Staying Current

- OIG Newsroom  http://oig.hhs.gov/newsroom/
- OIG e-updates  http://oig.ssa.gov/e-updates
- OIG Eye on Oversight Video Series
- CMS Open Door Forums and National Provider Calls
- CMS Center for Program Integrity Fraud Fact Sheet
  http://www.stopmedicarefarud.gov/newsroom/factsheets/medicare-fraud.html
Staying Current

- HCCA – This Week in Corporate Compliance
- NHPCO Regulatory Alerts  [http://www.nhpco.org/regulatory/alerts-and-publications](http://www.nhpco.org/regulatory/alerts-and-publications) (members only)
- State Associations

Questions/Discussion...
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