LEGAL UPDATES

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HHS Publishes Nursing Facility ICPG

Industry

Healthcare

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In November 2024, the U.S. Department of Health and Human Services Office of Inspector General (OIG) published the Industry-Specific Compliance Program Guidance for Skilled Nursing Facilities and Nursing Facilities (Nursing Facility ICPG). The purpose of the Nursing Facility ICPG, together with OIG's General Compliance Program Guidance, is to identify key risk areas for nursing facilities and provide recommendations and practical considerations for mitigating those risks. This Nursing Facility ICPG is the first update to OIG's Compliance Program Guidance since 2008 and reacts to changes in the industry since that time, particularly to the vulnerabilities exacerbated by the COVID-19 pandemic. The Nursing Facility ICPG is an invaluable resource for nursing facilities, as it can help them implement an effective compliance and quality program and ensure their facility satisfies the Centers for Medicare and Medicaid Services Requirements of Participation (ROP) and other federal and state requirements.

The Nursing Facility ICPG identifies key risk areas for potential fraud and abuse and provides strategies to mitigate them. This section includes chapters on (1) quality of care and quality of life for residents, (2) Medicare and Medicaid billing requirements, (3) the federal Anti-Kickback Statute (AKS), and (4) other risk areas such as related-party transactions and privacy breaches.

1. Quality of care and quality of life for residents

The guidance notes that poor quality of care and quality of live for residents raises the risk of failure to comply with the ROP and also poses a risk of fraud and abuse findings. The guidance provides examples of such risks, highlights common risk areas for nursing facilities related to quality of care and quality of life for residents, and provides recommendations for mitigation in a variety of areas. Among others, the Nursing Facility ICPG identifies risk areas such as

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gaps in staffing, the need for resident safety programs, and the facility's medication management processes.

2. Medicare and Medicaid billing requirements

Adherence to billing requirements is a critical component of all nursing facilities' compliance programs because it reduces the risk of facing criminal prosecution, civil liability, and exclusion from participation in federal healthcare programs. This section of the Nursing Facility ICPG focuses on how to comply with the SNF Prospective Payment System, Value-Based Payment Models, Medicare Advantage and Medicaid Managed Care, Medicare Part D, and Medicare Health Plan Enrollment for residents.

3. Federal Anti-Kickback Statute

The Nursing Home ICPG provides guidance to ensure facilities' continued compliance with the AKS and recommends that nursing facilities should identify and evaluate any arrangements that implicate referral sources and referral recipients to reduce the risk of potential fraud and abuse. Specifically, nursing facilities should cautiously approach any arrangements that include free services, discounts, or swapping and should structure them to satisfy an AKS exception or safe harbor whenever possible. This section also provides helpful examples of potentially risky arrangements.

4. Other risk areas

This section identifies other risk areas that should be included in compliance and quality training, risk assessment, and monitoring, including related-party transactions, physician self-referral law, anti-supplementation of Medicare or Medicaid payments, HIPAA privacy, security, breach notification rules, and civil rights laws.

Section III of the Nursing Facility ICPG provides additional compliance, quality, and resident safety considerations. OIG emphasizes the critical role executive management and leadership play in oversight. The Nursing Facility ICPG recommends that leadership demonstrate their commitment to compliance by ensuring they implement a robust compliance program and prioritizing reporting and staff training.

The Nursing Facility ICPG also includes an overview of Medicare and Medicaid reimbursement recommendations for nursing facilities, which is intended to provide context for the risk areas described in the release. Since Medicare and Medicaid require nursing facilities to certify that all claimed services satisfy the applicable laws and regulations whenever they apply for reimbursement, creating a robust compliance program can assist nursing facilities with meeting their obligations by ensuring that the care provided meets professional standards and promotes the residents' quality of

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life. The OIG recommends that nursing facilities consult this Reimbursement Supplement for further understanding of their obligations.

What this means to you

The Nursing Facility ICPG is a comprehensive resource that identifies voluntary methods nursing facilities can use to improve their compliance and quality efforts to reduce fraud, waste, abuse, and substandard care. Nursing facilities should refer to this guide whenever creating or revising their compliance and quality programs and as a reference source when evaluating their programs. Through implementing these recommendations, nursing facilities can improve the care residents receive while also ensuring their compliance with federal and state laws and regulations.

Contact us

If you have questions regarding OIG's Nursing Facility ICPG or other compliance-related concerns, please contact Crystal Bloom, Rebecca Rodman, Taylor White, or your Husch Blackwell Attorney.

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