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Skilled Nursing Facility Activities in the OIG's 2011 Work Plan

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On October 1, 2010, The U.S. Department of Health and Human Services Office of the Inspector General ("OIG") released its Work Plan for 2011. The OIG releases its work plan for each year in advance of the coming year. The work plan provides stakeholders in the health care industry with a broad overview of the OIG's activities in the coming year as they relate to its enforcement priorities and issues it will review and evaluate during that fiscal year. This client alert is one in a series of alerts that will outline the OIG's activities, as discussed in the 2011 Work Plan, for a specific industry sector - Skilled Nursing Facilities ("SNFs").

The OIG's activities relating to SNFs for 2011 are broadly focused on issues such as quality of care, background checks, payment, hospice utilization and disaster preparedness. The following is a summary of each of the issues and what the OIG is focusing on.

Quality of Care

- **Medicare Requirements for Quality of Care in Skilled Nursing Facilities**

The OIG Office of Evaluations and Inspections ("OEI") will be conducting reviews of how SNFs have complied with certain Medicare requirements for participation relating to quality of care. OEI's reviews are going to focus on the link between plans of care and assessments of residents, services provided pursuant to plans of care and discharge plans. OEI expects to finish its review in FY 2012.

- **Assessment and Monitoring of Nursing Home Residents Receiving Atypical Antipsychotic Drugs**

OEI will be conducting reviews of care plans and assessments as they relate specifically to the use of atypical antipsychotic drugs in residents. It will also evaluate the extent to which SNFs use CMS's Resident Assessment Protocol for Psychotropic Drugs to develop residents' care plans. OEI expects to complete this review in FY 2011.

- **Oversight of Poorly Performing Nursing Homes**

OEI will be conducting a review of CMS and State Survey Agency ("SSA") use of enforcement measures to determine the impact of enforcement measures on improving the quality of care in poorly performing facilities. OEI will also be evaluating the extent to which CMS and SSAs follow up to ensure that poorly performing nursing homes implement plans of correction. OEI expects to complete this review in FY 2012.

- **Hospitalizations of Nursing Home Residents**

OEI will evaluate the extent of hospitalizations of Medicare residents in SNFs to assess whether they were caused by poor quality or unnecessary fragmentation of services. It is also going to look at the extent of CMS' oversight of SNFs with high rates of hospitalization. OEI expects to complete this review in FY 2011.

Background Checks

- **Criminal Background Checks for Nursing Facility Employees**

The employment of individuals with criminal backgrounds has been and continues to be a government concern and a focus of recent federal policy initiatives. OEI will be studying SNFs to determine whether or not they have employed individuals who have criminal convictions. It will also look at the types of convictions and states that require criminal background checks. OEI expects to complete this review in FY 2011.

- **Program for National and State Background Checks for Long-Term-Care Employees**

The Patient Protection and Affordable Care Act of 2010 ("PPACA") mandated a program of background checks for prospective LTC employees with direct patient access. PPACA also required OIG to evaluate the program. OIG is going to evaluate the program and procedures implemented by States. OEI expects to complete this review in FY 2012.

Payment

- **Medicare Part A Payments to Skilled Nursing Facilities**

OEI is going to conduct reviews of SNF claims for 2009 to determine whether claims were medically necessary, sufficiently documented, and coded correctly. The OIG has determined in prior evaluations that a large percentage of claims were not supported by clinical documentation. Further findings on this issue could result in additional scrutiny in the industry by the MACs, RACs, etc. OEI expects to complete this review in FY 2012.

- **Medicare Part B Services During Non - Part A Nursing Home Stays: 2008 Overview**

The extent to which ancillary providers bill Part B for services provided to residents in a non-Part A stay has been a focus of inquiry for OIG since the repeal of certain consolidated billing provisions. OIG was tasked with ensuring program integrity on these issues via §313 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000. OEI is going to continue to review these issues and expects to issue its findings in FY 2011.

Hospice Utilization

- **Hospice Utilization in Nursing Facilities**

OEI will be looking at high rates of utilization of hospice services in SNFs. OIG has looked at similar issues in the past and found high rates of claims that it believed were not meeting claim criteria. This review is also going to focus on business relationships between SNFs and hospices and assess the marketing practices and materials of hospices associated with high utilization patterns. OEI expects to complete this review in FY 2011.

- **Services Provided to Hospice Beneficiaries Residing in Nursing Facilities**

The delineation of services provided by hospices and SNFs when SNF residents receive hospice care will be the focus of an OEI review. It will look at hospice and SNF medical records, including plans of care. OEI will focus on the extent to which hospices and nursing facilities coordinate care and identify service and payment arrangements between them. It will also look at the appropriateness of hospices' general inpatient care claims. OEI expects to complete this review in FY 2012.

Disaster Preparedness

- **Nursing Home Emergency Preparedness and Evacuations During Selected Natural Disasters**

Hurricanes and other natural disaster events have led to a serious reexamination of the plans that are in place to address the needs of SNFs when faced with such disasters. OEI will be reviewing SNFs emergency preparedness plans. It will also look at specific experiences of selected nursing homes, including challenges, successes, and lessons learned, when they implemented their plans during recent disasters, such as hurricanes, floods, and wildfires. OEI expects to complete this review in FY 2011.

Each of the above areas of inquiry in the OIG's 2011 Work Plan represent issues that SNF and nursing home providers in general should be tuned into. OIG Work Plan priorities often result in additional enforcement action, significant change in CMS policy or both.

It is very clear from the 2011 Work Plan that overall federal policy priorities relating to the quality of care provided in SNFs, background checks on employees and program integrity will continue to be a focus of the OIG and will likely lead to additional policy changes over time. Each of these issues were already embodied in PPACA in some form or another.

For more information on the OIG's Work Plan for 2011, its priorities, Medicare and Medicaid program integrity initiatives in general or assistance with responding to an OIG or OEI inquiry relating to any issue, please contact a member of Benesch's Health Care Department:

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