

LEGAL UPDATES

OIG Issues New Nursing Facility Compliance Guidance, Comes on the Heels of Enhanced Medicare Enrollment Requirements for SNFs

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The Office of Inspector General at the U.S. Department of Health and Human Services (OIG) recently followed up on a 2023 commitment to supplement its [General Compliance Program Guidance](#) (GCPG) by publishing its first “industry-specific Compliance Program Guidance” (which the OIG refers to as “ICPG”).

As discussed in a previous Lathrop GPM [Legal Update](#), the GCPG outlines the OIG’s recommendations for the implementation of effective compliance programs for health care providers, entities, and other stakeholders. The new Nursing Facility ICPG comes on the heels of two significant program integrity initiatives from earlier this fall: an updated CMS-855A form (with more stringent and detailed disclosure requirements) and the launch of a new off-cycle enrollment revalidation effort targeting skilled nursing facilities (SNFs) that will continue through the end of 2024.

New Compliance Guidance

When it first published the GCPG, OIG promised it would follow up with several ICPG. OIG indicated that the ICPG would drill down on specific fraud and abuse areas particularly relevant to unique actors within the health care industry and outline measures that those industry participants could take to reduce risks.

In late November 2024, OIG [published](#) its first ICPG, which is focused on Nursing Facility compliance.^[1] Included within OIG’s definition of a Nursing Facility are Medicare SNFs, Medicaid Nursing Facilities, dually certified facilities, along with management companies, holding companies, and health systems that own and operate SNFs.

The Nursing Facility ICPG helpfully outlines OIG’s assessment of significant compliance risk areas for Nursing Facilities and makes recommendations for mitigating the identified risks.

Highlighted risks include:

- Poor quality of care and quality of life. For example, the failure to comply with standard of care-based regulations applicable to a Nursing Facility including

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those related to the rights of residents (42 CFR § 483.10), admission, transfer, and discharge (42 CFR § 483.15), and care planning (42 CFR § 483.21). In its discussion on this point, the OIG notes its view that poor quality of care can translate to the submission of false claims, actionable under the False Claims Act depending on the circumstances. Specific ways this might happen, for instance, include billing for grossly substandard services, housing residents in unacceptable living conditions, failure to provide residents with activities and failure to provide residents with needed psychiatric care).

- Lack of compliance with Medicare and Medicaid billing requirements^[2] including duplicate billing, submission of insufficient documentation, errant cost reports and cost report accounting, and improper classification of residents into payment groups.
- Problematic arrangements (including those with below fair market value compensation) with referral sources and referral recipients that may violate state and federal fraud and abuse requirements including the Federal Anti-Kickback Statute.
- Other risk areas highlighted by the OIG include related party transactions and the failure to address the same appropriately in the SNF's Medicare cost report as well as risk areas that can arise with SNF participation in value-based arrangements (such as manipulating data to enhance quality-based payments).

After outlining its primary areas of compliance risk concern, OIG then provides compliance professionals and Nursing Facility leadership detailed recommendations to mitigate the risks. These detailed recommendations include checklists, evaluation tools, and compliance officer expectations and, if appropriately implemented can reduce facility risk, promote quality, and enhance resident satisfaction.

Program Integrity Efforts Target SNFs

In October 2024, CMS released an updated CMS-855A form that requires much more comprehensive disclosures than had been the case under earlier versions of that document. The focus of the new disclosure requirements is on facility ownership and, in particular, peering behind the curtain of both direct and indirect ownership structures, with the goal of increasing transparency and accountability. CMS has specifically focused on SNF ownership by private equity companies as the impetus for its efforts in this area. Much of this takes the form of a new attachment to the 855A, "Attachment 1: Skilled Nursing Facility Disclosures". Attachment 1 is 19 pages long and obligates SNFs to disclose the following:

- All members of their governing body, irrespective of their business type;
- All members (individual or organizational) of a SNF LLC (regardless of their ownership percentage);
- All "Additional Disclosable Parties" ("ADPs"), a broadly defined term that includes individuals / organizations that provide policies or procedures for any of the SNF's operations; provide management or administrative services, management or clinical consulting services, or accounting or financial services to the SNF; leases or subleases real property to the SNF or owns a five percent or greater interest in the total value of the SNF's real property; or exercises operational, financial or managerial control over a part of the SNF.
- In addition, parties within the ADPs are also required to be disclosed with the specifics depending on the organizational structure of the ADP itself. For example, for an ADP that is an LLC the SNF must disclose any person or entity that manages the LLC as well as any person or entity that has a direct or indirect ownership interest in the LLC, regardless of percentage.

Attachment 1 is in addition to all of the other parts of the CMS-855A form that of course must be completed upon initial enrollment, as well as when various transactions occur (including both changes of ownership and changes of information). These new requirements are very detailed and will likely require a fair amount of time to complete.



Meanwhile, CMS launched an off-cycle Medicare enrollment revalidation that started in October 2024 targeting SNFs. This initiative will continue through the end of December. Providers are required to complete revalidation within 90 days of receipt of the revalidation notice. The new Attachment 1 requirements will need to be completed as part of the revalidation process.

If you have questions about compliance in the health care industry, including compliance in Medicare and Medicaid Nursing Facilities, please contact [Jesse Berg](#) or [Ben Peltier](#) or any member of the Lathrop GPM [Health Law](#) practice group.

[1] This recent guidance updates prior OIG guidance (“Compliance Program Guidance for Nursing Facilities”) first issued in 2000 and then supplemented with additional guidance in 2008. The prior OIG guidance is still available on OIG website in the Compliance Program Guidance [archive](#).

[2] The Nursing Facility ICPG includes a “Reimbursement Supplement” which provides a detailed overview of Medicare and Medicaid reimbursement requirements. The Reimbursement Supplement is separately [accessible](#) on the OIG website.