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COMPLIANCE UPDATE OIG WORK PLAN FOR FISCAL YEAR 2005

The mission of the Office of Inspector General ("OIG") is to improve the Health and Human Services ("HHS") programs and operations and promote the economy, efficiency, and effectiveness of the programs through the use of independent and objective audits, evaluations and investigations. The Work Plan identifies topics to be addressed by the Office of Audit Services ("OAS"), the Office of Evaluation and Inspections ("OEI"), Office of Investigations ("OI") and the Office of Counsel ("OCIG").

The OAS conducts comprehensive financial and performance audits to determine whether program objectives are being achieved, which program objectives need to be performed more efficiently and to identify systemic weaknesses that give rise to fraud, waste and abuse. The OEI conducts program inspections that focus on specific areas of concern to the department. The results of the inspections provide insight into how effectively these programs are operating and recommendations can be offered to improve their overall efficiency. The OI conducts investigations of fraud and misconduct to protect the department's programs for the beneficiaries. The OI concentrates its resources on criminal investigations of HHS programs and operations. And the OCIG provides the administrative litigation services to the OIG.

Recently the OIG released its Work Plan for fiscal year 2005. The Work Plan serves as a current and advanced warning system for healthcare organizations that strive for an effective compliance program. In such work plan, the OIG identifies projects and/or topics it plans to focus on and direct its Office's energies and resources toward for the upcoming fiscal year. Toward that end, the following topics were identified as impacting

skilled nursing facilities:

Medicare Beneficiary Access to SNFs Under PPS

- This is a follow up study to determine whether Medicare beneficiaries with certain medical conditions or service needs experienced delays in service as a result of PPS. The OEI will evaluate and determine whether the prospective payment system has affected Medicare beneficiaries access to care. Previously it was found that Medicare beneficiaries generally did have access to skilled nursing care.

Use of Additional Funds Provided to SNFs

- In July 2003, Centers for Medicare and Medicaid Services ("CMS") published a SNF payment rule which incorporated a forecast error correction to adjust for the difference between actual and forecasted data since 1998. The correction added an additional \$6.9 billion in SNF Medicare payments over 10 years. The nursing home industry committed to using these funds to improve patient care. The OEI will review how the funds for the forecast error correction have been utilized and determine whether SNFs have used the funds to improve patient care.

Nurse Aide Registries

- The OEI will evaluate how nurse aide registries are established and maintained, how consistently nursing homes check registries, and how State nursing home surveyors assess compliance with registry requirements pursuant to Federal law.

Nursing Home Deficiency Trends

- The OEI will re-examine the nature and extent of survey and certification deficiencies in nursing homes and identify patterns of repeated noncompliance with Federal quality standards. In a 2002 report, it was found that the proportion of nursing homes cited for deficiencies, the total number of deficiencies, and the key categories of deficiencies directly related to quality of care had all increased since 1998.

Nursing Home Compliance with Minimum Data Set Reporting Requirements

- The OEI will examine nursing home compliance with reporting requirements related to the Minimum Data Set ("MDS"). It will review data submissions and nursing home records to assess the timeliness of reporting for all nursing home residents and the accuracy of reporting for beneficiaries in Part A covered stays.

Nursing Home Resident Assessment and Care Planning

- The OEI will examine the type, frequency, and severity of deficiencies related to assessment and care planning for nursing home residents. It will also examine compliance issues and methods that State survey agencies use to identify and deal with MDS assessments and care plans that do not address all the needs of residents.

Enforcement Actions Against Noncompliant Nursing Homes

- For noncompliant Medicare facilities, CMS is responsible for enforcement actions, including denial of payments, collection of civil monetary penalties and other mandatory enforcement actions. The OEI will examine the effectiveness of CMS and State enforcement actions taken against noncompliant nursing homes and determine if States appropriately refer nursing home enforcement cases to CMS.

Nursing Home Informal Dispute Resolution

- This OEI study will review trends and outcomes of the nursing home Informal Dispute Resolution process, determine whether States are offering and providing informal dispute resolution and whether they are following Federal requirements in the way they do so.

Nursing Home Residents' Rights

- The OEI will assess the extent to which nursing home residents and their families are aware of their rights and will also determine how nursing homes ensure the personal rights of residents.

Skilled Nursing Facilities' Involvement in Consecutive Inpatient Stays

- This OEI study will determine whether SNF care provided to Medicare beneficiaries with consecutive inpatient stays was medically necessary. All SNF stays must be preceded by an inpatient hospital stay. This study will focus on beneficiaries who experience three or more consecutive stays, including at least one SNF stay.

Imaging and Laboratory Services in Nursing Homes

- The OEI will determine the extent and nature of any medically unnecessary or excessive billing for imaging and laboratory services provided to nursing home residents. It will review a sample of services and examine utilization patterns in

nursing facilities.

Skilled Nursing Facility Rehabilitation and Infusion Therapy Services

- The OAS will analyze whether rehabilitation and infusion therapy services provided to Medicare beneficiaries in skilled nursing facilities were medically necessary, adequately supported, and actually provided as ordered.

State Compliance With Complaint Investigation Guidelines

- The OEI will examine the procedures that States use to receive, investigate, and resolve abuse complaints. States must investigate all allegations of immediate jeopardy within 2 days and all allegations of actual harm within 10 days.

Medical Necessity of Durable Medical Equipment

- The OEI will determine the appropriateness of Medicare payments for certain items of durable medical equipment, such as power wheelchairs and therapeutic footwear. It will assess whether the suppliers' documentation supports the claim, whether the item was medically necessary, and whether the beneficiary actually received the item.

Medicare Pricing of Equipment and Supplies

- The OEI will compare Medicare payment rates for certain medical equipment and supplies with the rates of other Federal and State health programs, as well as with wholesale and retail prices. The review will cover such items as wheelchairs, enteral nutrition, and oxygen equipment and supplies.

Nursing Home Residents With Mental Illness and Mental Retardation

- The OEI will assess the Preadmission Screening and Resident Review ("PASRR") program for Medicaid nursing facility residents aged 22 to 64 with a serious mental illness or mental retardation. In a January 2001 report, OEI found that PASRRs were not in compliance with Federal requirements. This follow-up review will evaluate CMS's oversight of States' PASRR programs, State Medicaid agencies' oversight of the PASRR process, and the extent to which nursing facilities comply with PASRR requirements.

Claims Paid for Clinical Diagnostic Laboratory Services

- This OAS review will assess whether Medicaid payments for certain laboratory and pathology tests exceeded Medicare rates for the same tests. The Social Security Act limits Medicaid payments for clinical laboratory tests to the amounts

payable for the same tests on the Medicare fee schedule.

Health Care Fraud

- The Office of Investigations will investigate individuals, facilities, or entities that bill Medicare and/or Medicaid for services not rendered, make claims that manipulate payment codes or make other false claims to obtain program funds.
- The OIG will continue to encourage providers to promptly self-disclose improper conduct.

Legal Counsel

- The OIG plans to issue compliance program guidance to assist the health care industry in establishing voluntary corporate compliance programs and in developing effective internal controls that promote adherence to applicable Federal law.
- The Office of Legal Counsel will continue to work with investigators and auditors from the OIG and Department of Justice prosecutors to pursue False Claims Act cases.
- The OIG expects to publish new safe harbor exemptions and will evaluate comments from the public concerning proposals for additional safe harbors.
- Expect the OIG to continue to pursue civil penalties for submission of false claims and activity in violation of anti-kickback laws.

If you have any questions or need additional information, please feel free to call Patrick Formato, Betsy R. Malik or Barbara Phair of our Health Law department at (516) 328-2300.