

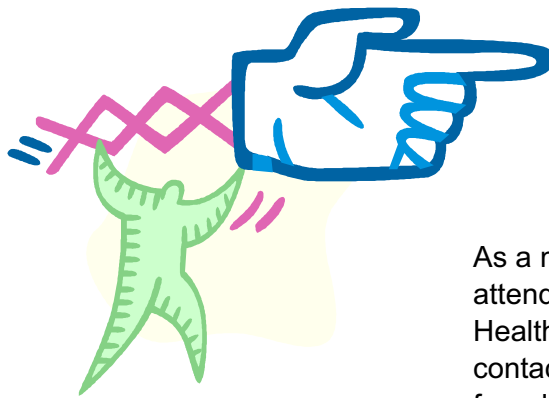


## HealthCap RMS Regional Educational Seminars

Each year the HealthCap RMS team hosts a full day seminar at several locations around the country. This year's seminar:

### *"Is the Jury Out or... Is the Verdict In?"*

will focus on accident and incident prevention, reporting, documentation and related case studies. The schedule for this year is:



Thursday, August 21, 2008  
Friday, September 12, 2008  
Thursday, October 23, 2008  
TBA

Claremont, California  
Omaha, Nebraska  
Wichita, Kansas  
New York State

As a member of HealthCap, your facility is entitled to two free passes to attend a seminar in your area. Don't miss this great opportunity to attend a HealthCap RMS program! Please mark the date on your calendar or contact Lisa O'Neill at (734) 996-2700 (or [lisa.oneill@chelsearhone.com](mailto:lisa.oneill@chelsearhone.com)) for additional information.

[WWW.HCRMS.COM](http://WWW.HCRMS.COM)

**HealthCap RMS**

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#### *In this Issue:*

**OIG - Overview of the new *Supplemental Compliance Program Guidance***

**Assist Bars/Side Rails - *A Safety Overview***

**Upcoming Seminars - *Spring-Summer '08***

**Members Only Website - *An Immensely Valuable Resource***



## OIG SUPPLEMENTAL COMPLIANCE PROGRAM GUIDANCE

Co-Authors: John Paul Hessburg; Margaret A. Chamberlain; Andrea M. Szumlinski

In April, the Office of Inspector General (OIG) published a Supplemental Compliance Program Guidance (CPG) for nursing facilities. While this new guidance does not change the form or elements of an effective CPG set forth by the OIG in 2000, it emphasizes the importance of corporate compliance programs, as they serve as evidence of a "...facility's good faith effort to comply with applicable statutes, regulations, and other Federal health care program requirements, and may significantly reduce the risk of unlawful conduct and corresponding sanctions." Moreover, the Supplemental CPG identifies additional risk areas for nursing and skilled nursing facilities to consider when revising or implementing corporate compliance programs.

While the risk areas identified in the 2000 CPG remain in place, the additional risk areas in the Supplemental Guidance can be broken down into five main categories, including:



- Quality of care
- Submission of accurate claims
- Anti-kickback
- Other risk areas
- HIPAA compliance.

Violations or noncompliance in these areas can result in liability under the Federal False Claims Act, the Civil Money Penalties Law, and other statutes and regulations that address false and/or fraudulent claims submitted for reimbursement to the State and Federal Government.

#### **Quality of Care**

The OIG indicates that failure to provide quality care on a "systemic and widespread basis" can result in false claim allegations. The quality of care risk area contains five subsections, any of which can trigger a violation under the "quality of care" risk area. The focus areas include: sufficient and competent staff; comprehensive resident care plans; appropriate use of psychotropic medications; medication management; and resident safety.

#### **Submission of Accurate Claims**

This risk area primarily relates to billing for items not provided, billing for services that are not medically necessary, and billing for inadequate care. The OIG will be focusing on skilled nursing facilities that improperly upcode resident RUG assignments, as this upcoding could result in misrepresentation of a resident's status and submission of false claims.

Therapy services, including physical, occupational, and speech therapy are also a concern for the OIG. The improper utilization of therapy services to increase the severity of RUG classifications, the over utilization of therapy services, stinting therapy services, and outside therapy suppliers will be receiving higher scrutiny in the near future.

If the OIG believes the facility knows, or should know, that an employee or contractor is excluded from participation in a Federal health care program, and is providing services to residents, the Government can impose Civil Money Penalties against any individual who arranges or contracts with an excluded individual. Furthermore, the facility can be required to reimburse the Government for all services rendered by an excluded individual. Accordingly, the CPG "strongly advises" facilities to screen all potential owners, officers, directors, employees, contractors, and agents prior to engaging their services by utilizing the OIG's List of Excluded Individuals/Entities (LEIE) on the OIG's website and the U.S. General Services Administration's Excluded Parties List System.

Facilities will also be under scrutiny for restorative and personal care services, including pressure sore avoidance, active and passive range of motion, ambulation, fall prevention, incontinence management, bathing, dressing, and grooming. The OIG indicates that it is aware of facilities who seek reimbursement for the above-referenced services "despite the fact that the services were not provided or were so wholly deficient that they amounted to no care at all." If a facility has received a citation in these areas, it would be prudent to be vigilant in monitoring compliance.

*(Continued on inside)*

**Federal Anti-Kickback Statute**

The anti-kickback statute is criminal in nature and prohibits remuneration of any kind to reward or induce the referral or generation of Federal health care program business. In addition to criminal charges and Civil Money Penalties, violators are subject to liability under the False Claims Act if violation results in submission of a claim for reimbursement under any Federal health care program.

The OIG set forth four general categories that frequently fall within the ambit of the Federal anti-kickback statute. First is the provision of "free goods and services" to an existing or potential referral source. The second category specified by the OIG concerns service contracts, including both non-physician and physician services. The OIG indicates that oftentimes these business arrangements are "disguised" kickbacks that appear, on their face, to be legitimate. Third, the OIG identifies that "discounts," including price reductions and swapping, will be receiving heightened scrutiny. Facilities are strongly encouraged to insure that all discounts, including rebates, are properly disclosed and accurately reflected on all cost reports. "Swapping" is described as a situation where a facility is given a low price from a supplier or provider in exchange for the facility referring to the supplier or provider other Federal health care business. Fourth, the OIG will be focusing on hospice arrangements with facilities. Facilities should be wary of requesting or accepting any type of remuneration from a hospice provider. Fifth, reserved bed

arrangements are under scrutiny. Payments from hospitals to reserve a bed may also pose a risk for liability.

**Other Risk Areas**

The CPG also indicates that physician self-referrals and supplemental payments will be investigated. Medicare Part D extends voluntary prescription drug coverage to all Medicare beneficiaries, including nursing home residents. Residents are free to choose their own Part D plans. Accordingly, CMS expects facilities to work with their pharmacies to assure they recognize Part D plans chosen by all residents. If the pharmacy does not, the facility must add additional pharmacies to allow residents the freedom to choose their plans.

**HIPAA Privacy and Security Rules**

HIPAA compliance will also be scrutinized in the near future, as enforcement has been delayed, and facilities were expected to have implemented privacy practices as of April 20, 2005.

Although these additional risk areas are identified within the CPG, the OIG recognizes that the CPG cannot be a "one-size-fits-all" and that facilities should also continue to focus on facility-specific issues. The CPG is not intended to address all potential risk areas, but merely provide a framework or starting point for addressing compliance.



**CLAIMS AND EARLY REPORTING**

Kasie Leigh Ruhlig  
Chelsea Rhone, LLC

A hallmark of HealthCap's claim strategy has always been to investigate incidents as if they were potential devastating claims. Then if a legal claim arises, your facility is in the best position possible to defend itself. When our litigation managers don't have that chance, key witnesses may have left or forgotten the details of the incident. Many facilities are forced to defend themselves years after the fact, long after your staff has turned over and the fall (or wound, or elopement, etc.) protocol has changed.

Think this doesn't matter? HealthCap's own closed data supports this strategy. A fracture claim reported within a week of occurrence resolved for an average of \$108,000. If HealthCap wasn't notified for over two years, a fracture claim cost \$156,000 to resolve on average. Even long-term issues are affected. A pressure sore claim reported within a month costs approximately \$145,000 to resolve whereas one reported later costs \$159,000 on average. One example of incidents is harm tags (G-L) from state surveyors. More and more states are issuing harm tags for events that in years past would have been benign. Nurses' time that would be better spent doing resident

**Disaster Recovery Resource Initiative**

Members of the HealthCap family in the nation's heartland have experienced and continue to be at risk for the worst flooding in recent history. The national news has indicated that the loss of property may be in the billions of dollars before all is said and done. Over a week later the devastating impact on human life is being felt; bodies are being recovered, insurance plans are refusing coverage and families are reuniting only to find their personal possessions have been lost. When major flooding was predicted and announced HealthCap RMS in conjunction with HealthCap, Wells Fargo Insurance, Lee Insurance, the Assurance Agency, Hamlin and Burton and the Kitch firm implemented a "Disaster Recovery Resource Initiative". The goal of the initiative was to provide emergency resources to our members at risk of being affected by flooding, tornados, etc.

We discovered while implementing the *Disaster Recovery Resource Initiative* that communication was hindered not only by a natural disaster but also by a lack of contact information for our member facilities! Although HealthCap RMS has telephone numbers for most of our insured's, many areas affected by flooding lost telephone service. Not to be deterred we resorted to communicating via e-mail.



**24-Hour Sentinel Occurrence Support Hotline**

**1-877-473-7773**

care is spent responding to surveyors and dealing with an ever critical press. Any harm tag is public knowledge and unfortunately allows a plaintiff attorney to target your facility with "objective" proof of his or her case. All of these harm tags should be reported to HealthCap so that we can help you position your facility in the best light possible in case of legal action.

Reporting incidents when they happen allows you to get the support that you need. Whether the incident is a catastrophic event resulting in death or an upset family member, you deserve help with that problem. Sending a copy of the incident report to your agent or calling the Sentinel Occurrence Support line at 877-473-7773 will put you in touch with another resource. The litigation manager will be able to assist you in responding to any media scrutiny, will recommend regulatory counsel to assist or will assist himself/herself with plan of corrections and IDR's, will assist in conducting the internal investigation, and will provide a sounding board to figure out how to best communicate with the concerned family.

The recovery process for those affected by these events will take time, energy and patience. Healthcap RMS is available to provide support and guidance. To assist you in accessing which protocols you may need during this time of recovery HealthCap RMS has a *Disaster Manual* for our members to use as a resource. The manual contains policies and procedures based on industry best practice and are available on the Member Only link at [www.hcrms.com](http://www.hcrms.com). The policies may be used in their entirety or personalized to meet the needs of your facility and use of this manual is voluntary. To access the member only link:

- Enter the website [www.hcrms.com](http://www.hcrms.com)
- ▶Go to the "member only" link on the left side of the screen
- ▶You will be asked to enter facility specific information
- ▶Within 24 hours you will receive a confirmation and member only access

We encourage each facility to register on the website as this will allow you to enjoy the benefits of being a HealthCap member and will assist us in maintaining a secondary source of communication with you via e-mail in the future.

Please remember that the **SOS Hotline (877) 473-7773** is another valuable resource for our members and is available 24 hours a day seven days a week.

**Thank you. We appreciate you being a part of the HealthCap family.**