

Compliance Today – July 2023



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The OIG Work Plan and its impact on compliance professionals

by Lori Strauss

The U.S. Department of Health & Human Services (HHS) Office of Inspector General (OIG) Work Plan is an essential resource for healthcare compliance professionals to assist in identifying risks for their organizations.^[1]

I suggest compliance professionals incorporate OIG risk areas into their compliance program's work plan when the organization performs the identified risk service or offers the identified risk area. In addition, they also use other resources to identify risk areas, service areas, or providers that may be prone to fraud, waste, and abuse to incorporate into their organization's work plan. For example, compliance professionals should have ongoing meetings with management to inquire about such things as planned new services; compliance professionals should review fraud alerts, recent corporate integrity agreements, industry publications, and state work plans—among other resources—to better address potential risks for their organizations.

OIG Work Plan updates

OIG releases monthly updates to the Work Plan, and this is why it is a good idea to check for OIG updates at the same frequency. Just as compliance professionals adjust their work plans throughout the year to address new and developing risk areas that weren't known at the time the work plan was formalized, OIG does the same to prioritize, anticipate, and respond to emerging trends. Healthcare is a highly complex dynamic industry, and healthcare compliance professionals must be aware of and address developing risk areas to keep their organizations updated and compliant. Items on the OIG Work Plan may be there because they have been identified as risk areas that have the potential to result in the government overpaying for a service. You want to ensure that if your organization performs a service on the OIG Work Plan, it is incorporated into the compliance work plan to assess that area. It is important for compliance professionals to ensure that processes are working as expected—from the beginning to the end—and, if they're not, to correct them, provide any needed refunds, and monitor to ensure continued compliance. Aside from wanting to ensure the organization is doing the right thing, compliance professionals will want to assess their processes before (and if) the government comes in and does it for them.

Components of the OIG Work Plan

The OIG Work Plan includes audits and evaluations that are in progress or planned to be done during the current, upcoming, or future fiscal year by OIG's Office of Audit Services (OAS) and Office of Evaluation and Inspections (OEI). "OAS conducts audits that assess HHS programs and operations and examine the performance of HHS programs and grantees."^[2] Just as compliance professionals do for their organizations, "OIG uses data analytics and risk assessments to identify emerging issues and target high-risk areas to ensure the best use of staff

resources.” OIG reports that in fiscal year 2022, it produced 114 audits. Some of these included Medicare Part B add-on payments for COVID-19 tests, achieved savings rebate program–offset of rebates on CMS-64, follow-up review of inpatient claims under the post-acute-care transfer policy, electronic visit verification system for Medicaid in-home services, and COVID-19 vaccination status of nursing home staff. OEI conducts national evaluations to provide HHS, Congress, and the public with timely and reliable information on significant issues.”

[3]OIG reports it produced 43 evaluations in fiscal year 2022. Examples included: nursing home capabilities and collaboration to ensure resident care during emergencies, Medicare beneficiaries receiving buprenorphine for treating opioid use disorder, accuracy of falls reporting in home health Outcome and Assessment Information Set assessments, and biosimilar trends in Medicare Part B.

The projects in the OIG Work Plan cover the HHS department. The areas of the department “include the Centers for Medicare & Medicaid Services (CMS), public health agencies such as the Centers for Disease Control and Prevention (CDC) and National Institutes of Health (NIH), and human resources agencies such as the Administration for Children and Families and the Administration on Community Living (ACL).”[4]Also, OIG includes work that involves two or more departmental programs such as “State and local governments’ use of Federal funds” and some OIG Work Plan items may be statutorily required. This article will focus on some CMS-related projects in the OIG Work Plan for healthcare providers and entities.

OIG prioritizes its projects by assessing risks to identify areas most in need of attention while incorporating available resources. Compliance programs typically do the same for their organizations. For example, if management in your organization is already conducting some type of auditing and monitoring around an identified risk area, the compliance professional may select another risk area to audit.

Examples from the OIG Work Plan

The OIG Work Plan provides a nice summary of why the item is a risk area identified for review. Following are some of the projects on the OIG Work Plan specific to the type of setting. Review the entire OIG Work Plan focusing on your type of provider or facility, as the following provides only one example per category that involves CMS.

Nursing homes: In February of this year, OIG added an in-depth review of nursing home citations related to the use of antipsychotic drugs to be issued by OEI in fiscal year 2024. OIG has concerns about the high use of antipsychotic medications among nursing home residents. Antipsychotic drugs were developed to treat schizophrenia, and they have severe side effects, particularly “among the elderly with dementia . . . CMS took steps to discourage the use of these drugs, for example, developing publicly reported quality measures related to the use of antipsychotic drugs among nursing home residents. More recently, OIG has raised concerns about the potential falsification of schizophrenia diagnoses to make the use of antipsychotic drugs appear appropriate to avoid Federal attention. Therefore, we will conduct an in-depth review of survey reports to: (1) examine the nature of nursing home citations related to the use of antipsychotic drugs and (2) identify vulnerabilities that contribute to the inappropriate use of these drugs.”[5]

Hospitals: In November 2022, OIG added a review of Medicare payments for trauma claims to be issued by OAS in fiscal year 2024. “There have been concerns about trauma centers improperly billing for trauma team activation that is not medically necessary. In addition, we found that some providers have received trauma team activation payments without proper designation or verification as a trauma center. Currently, CMS does not track which providers are designated or verified as trauma centers. We will determine the amount of Medicare overpayments and Medicare charges that affect future hospital payments, we will identify providers that are not trauma centers or that billed for medically unnecessary trauma team activations.”[6] This is an example whereby the compliance

professional may know their hospital is not a trauma center and, therefore, should not submit claims for trauma team activation. However, some hospitals allegedly submitted claims that are not trauma centers. It would be in a hospital compliance professional's best interest to incorporate this into their work plan even if they are not a trauma center and to search for claim submissions to ensure no claims with the trauma team activation codes have been submitted.

Inpatient rehabilitation facilities (IRFs): In 2022, OIG added revisions for their IRF nationwide audit, expected to be issued in fiscal year 2024 by OAS. It was reported that Medicare paid several billion dollars for IRF stays nationwide. "In fiscal year 2021, [CMS] has consistently found high IRF error rates through its Comprehensive Error Rate Testing program."^[7] An IRF claim must meet certain coverage and documentation requirements "to be considered reasonable and necessary, it must meet certain coverage and documentation requirements. We issued a nationwide audit of IRF claims in September 2018"; they found that many IRF stays did not meet Medicare coverage and documentation requirements. The documentation did not support that IRF care was reasonable and necessary in accordance with Medicare requirements. OIG's "Hospital Compliance audits also frequently include IRF claims and have similarly found high error rates. In response to these findings, IRF stakeholders have stated that Medicare audit contractors and OIG have misconstrued the IRF coverage regulations. To better understand which claims IRFs believe are properly payable by Medicare, OIG needs more information from the IRF stakeholders. We plan to determine whether there are areas in which CMS can clarify Medicare IRF claims payment criteria. In addition, we will follow up on recommendations from our prior IRF audit . . . We believe data and input from IRF stakeholders are critical to identifying any specific areas that might require clarification and will result in more meaningful recommendations and a greater positive impact on the program." This is an excellent example of why speaking up is essential and demonstrates that OIG is listening to make meaningful improvements.

Opioid treatment programs (OTPs): In December 2022, OIG added to their Work Plan an audit of Medicare Part B opioid use disorder (OUD) treatment services provided by opioid treatment programs–bundled payments and telehealth services for OAS to conduct and be issued in fiscal year 2024. The summary states that "Substance use disorders, including [OUD], is used to sustain recovery and prevent overdoses. Currently, there are three U.S. Food and Drug Administration (FDA)–approved medications to treat OUD: buprenorphine, methadone, and naltrexone. Treatment for OUD is provided in several settings, including freestanding [OTP]s.

"Section 2005 of the Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) established a new Medicare Part B benefit for OUD treatment services furnished by OTPs. CMS implemented this benefit for services provided on or after January 1, 2020, as required by the SUPPORT Act. Section 1834(w)(2) of the Social Security Act authorized the HHS Secretary to implement the Medicare OTP benefit using one or more payment bundles. Under section 1861(jjj) of the Social Security Act, OUD treatment services include FDA–approved treatment medication, dispensing and administration of treatment medication, substance use counseling, individual and group therapy, toxicology testing, and other items and services that the HHS Secretary determines are appropriate.

"We will review the OUD treatment services that were reimbursed under the bundle payments provided to people enrolled in Medicare. We will determine the types, delivery methods (i.e., in person or via telehealth), and frequency of OUD treatment services provided to Medicare enrollees by OTPs that received bundled payments. We will compare the bundled payments for OUD treatment services with the reimbursement amount of the actual OUD treatment services if the services were not part of the bundled payment. We will also determine whether these services complied with certain Medicare requirements."^[8]

Conclusion

The OIG Work Plan is an invaluable resource for healthcare compliance professionals to reference when developing their organizations' compliance work plans.

Takeaways

- The U.S. Department of Health & Human Services Office of Inspector General (OIG) Work Plan is a resource for compliance professionals in developing their organizations' work plans.
- Compliance professionals should reference the OIG Work Plan monthly for updates.
- Compliance professionals should reference other resources (e.g., meetings with management, fraud alerts, corporate integrity agreement settlements, industry publications) to incorporate into and update their organizations' compliance work plans.
- As OIG prioritizes its projects, so should compliance professionals for their organizations. Prioritize projects based on the relative risks and available resources.
- The OIG Work Plan is a valuable resource that explains why items are on the Work Plan and what compliance professionals should assess at their organizations. Some areas also emphasize the importance for stakeholders to speak up when complex regulations may be open for interpretation and application.

1 U.S. Department of Health & Human Services, Office of Inspector General, "Work Plan," accessed March 25, 2023, <https://oig.hhs.gov/reports-and-publications/workplan/index.asp>

2 U.S. Department of Health & Human Services, Office of Inspector General, "Who We Are: Our Organization, Office of Audit Services (OAS)," fact sheet, last updated December 2022, <https://oig.hhs.gov/documents/root/1060/About-OIG-Fact-Sheet-December2022.pdf>.

3 U.S. Department of Health & Human Services, Office of Inspector General, "Who We Are: Office of Evaluation and Inspection (OEI)."

4 U.S. Department of Health & Human Services, Office of Inspector General, "Work Plan."

5 U.S. Department of Health & Human Services, Office of Inspector General, "In-Depth Review of Nursing Home Citations Related to the Use of Antipsychotic Drugs," accessed March 25, 2023, <https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000761.asp>.

6 U.S. Department of Health & Human Services, Office of Inspector General, "Review of Medicare Payments for Trauma Claims," accessed March 25, 2023, <https://bit.ly/3I2A2rq>.

7 U.S. Department of Health & Human Services, Office of Inspector General, "Inpatient Rehabilitation Facility Nationwide Audit," accessed March 25, 2023, <https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000729.asp>.

8 U.S. Department of Health & Human Services, Office of Inspector General, "Audit of Medicare Part B Opioid Use Disorder Treatment Services Provided by Opioid Treatment Programs—Bundled Payments and Telehealth Services," accessed March 25, 2023, <https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000749.asp>.

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