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EXPECT ACTIVE FOLLOW-UPS: OIG FINDS STATE SURVEY AGENCIES ARE NOT VERIFYING FACILITIES' CORRECTIONS OF DEFICIENCIES

On February 7, 2019, the Office of the Inspector General ("OIG") of the U.S. Department of Health and Human Services issued a **report** titled *CMS Guidance to State Survey Agencies on Verifying Correction of Deficiencies Needs to Be Improved to Help Ensure the Health and Safety of Nursing Home Residents* ("Report"). The Report found that seven state survey agencies, those responsible for inspecting skilled nursing facilities, regularly failed to verify that deficiencies found in those facilities were corrected. The Report also found that the Centers for Medicare & Medicaid Services' ("CMS's") guidance to state agencies on verifying skilled nursing facilities' corrections of deficiencies and maintaining documentation to support verification needs improvement.

DETAILED ANALYSIS

State survey agencies must verify that skilled nursing facilities correct identified deficiencies, such as the failure to provide necessary care and services, before certifying whether the facilities are in substantial compliance with federal participation requirements for Medicare and Medicaid.

In the past few years, OIG reviewed state survey agencies in nine states to assess if the state survey agencies always verified that the skilled nursing facilities carried out the actions and remedies promised and proposed in their plans of corrections. Of the nine selected state survey agencies in their previous reviews, seven did not always verify facilities' correction of deficiencies as required. Those seven states mentioned in the Report were: Arizona, Florida, Kansas, Nebraska, New York, North Carolina and Washington.

OIG found that for 326 of the 700 sampled deficiencies, the state survey agencies did not obtain evidence of nursing homes' correction of deficiencies or maintain sufficient evidence that the state survey agency had verified correction of deficiencies. For less serious deficiencies, the practice of six of the seven state survey agencies was to accept a nursing home's correction plan as confirmation of substantial compliance with federal participation requirements without obtaining from the nursing home the evidence of correction of deficiencies.

OIG expressed concern that if state survey agencies certify that nursing homes are in substantial compliance without properly verifying the correction of deficiencies and maintaining sufficient documentation to support the verification of deficiency correction, the health and safety of nursing home residents may be placed at risk.

EXAMPLE OF STATE SURVEY AGENCY NOT MAKING VERIFICATION OF CORRECTION

The Report offered an example of a serious deficiency where the state survey agency did not follow up and verify the correction of the deficiency.

"A state agency completed a nursing home survey and identified several deficiencies, including a G-rated deficiency related to quality of care (42 CFR § 483.25). The surveyor noted:

Based on observation, interview and record review, the facility failed to provide the necessary care and services . . . in accordance with the comprehensive assessment and plan of care for 1 of 4 diabetic residents . . . reviewed for medication administration. This failure occurred when the resident received too much diabetic medication and sustained a life threatening event requiring emergency medical intervention.

The state agency conducted the required follow up survey; however, it did not have documentation supporting that it had verified the correction of the deficiency."

OIG RECOMMENDATIONS

OIG recommended that CMS take specific actions to: (1) improve CMS's guidance to state survey agencies on verifying a skilled nursing facility's correction of deficiencies and maintaining documentation to support verification; (2) consider improving its forms related to the survey and certification process; and (3) work with state survey agencies to address technical issues with the system for maintaining supporting documentation.

PRACTICAL TAKEAWAYS

- Skilled nursing facilities should expect that state survey agencies will pay increased attention and take actions to confirm that the actions and corrections promised in a facility's plan of correction were implemented.
- Skilled nursing facilities may see changes to the CMS forms related to the survey and certification process, such as the Forms CMS-2567, CMS-2567B and CMS-1539, so that surveyors can explicitly indicate how a state survey agency verified correction of deficiencies and what evidence was reviewed.
- Skilled nursing facilities should review and establish practices and procedures for proactively documenting the corrective actions promised for any deficiency. Facilities should have those records ready, expecting that the state survey agency will more actively confirm that the actions occurred.

Should you have any questions about this or how to prepare your next plan of correction, please contact:

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