

## GETTING WITH THE PROGRAM: OIG RELEASES LONG-AWAITED NURSING FACILITY COMPLIANCE PROGRAM GUIDANCE

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On November 20, 2024, the U.S. Department of Health and Human Services Office of the Inspector General (“OIG”) released its long-awaited [Nursing Facility Industry Segment-Specific Compliance Program Guidance](#) (the “Nursing Facility ICPG”). The Nursing Facility ICPG includes analyses, discussion, and recommendations relating to various compliance considerations for nursing facilities. This guidance supplements similar guidance issued by OIG to such facilities in [2000](#) and [2008](#). Although the Nursing Facility ICPG discusses subject areas that mirror many of those referenced in OIG’s prior guidance (particularly the guidance issued in 2008), it does so in a more “user-friendly” format, with additional discussion of areas that have become a focal point for nursing facility compliance over the course of the last decade-and-a-half (e.g., infection control, alternative Medicare reimbursement programs, etc.). Key takeaways from the Nursing Facility ICPG include:

### NURSING FACILITY ICPG AS SUPPLEMENTAL TO BROADER OIG GUIDANCE

As OIG highlights, the Nursing Facility ICPG is supplemental to, and does not replace, prior/other compliance guidance issued by OIG. In particular, the Nursing Facility ICPG should be reviewed against the broader compliance framework outlined in OIG’s [General Compliance Program Guidance](#) (“GCPG”), which outlines general compliance guidance applicable to all categories of healthcare providers (last updated in November 2023). The GCPG outlines OIG’s “seven elements” for compliance program infrastructure:

- Written policies and procedures
- Compliance leadership and oversight
- Training and education
- Effective lines of communication with the compliance officer and disclosure program
- Enforcing standards: consequences and incentives
- Risk assessment, auditing, and monitoring
- Responding to detected offenses and developing corrective action initiatives

In the context of these seven elements, the Nursing Facility ICPG offers more pointed guidance and recommendations specific to nursing facilities (discussed below). It should be noted that the Nursing Facility ICPG does not alter the Medicare Requirements of Participation. See the State Operations Manual, Appendix PP.

## EXPANDED FOCUS ON COMPLIANCE AREAS RELEVANT TO NURSING FACILITIES

In prior compliance program guidance for nursing facilities issued in 2008 (noted above), OIG provided analyses and recommendations regarding areas of unique concern for nursing facilities, including:

1. Quality of care (e.g., sufficient staffing, comprehensive resident care plans, medication management, appropriate use of psychotropic medications, and resident safety); and
2. Submission of accurate claims (e.g., proper reporting of resident case-mix by SNFs, therapy services, screening for excluded individuals and entities, and restorative and personal care services).

The Nursing Facility ICPG updated this guidance to account for changes in nursing facility reimbursement and reimbursement methodologies and the emergence of developing areas of compliance focus in the intervening sixteen years. Beyond updating and adding to guidance in the areas above, the Nursing Facility ICPG provides new, unique guidance regarding (among other areas):

1. Staffing shortages and competencies
2. Appropriate resident activities
3. Challenges due to demographic changes in the resident profiles and higher resident acuity levels
4. Proper billing in connection with:
  - a. The SNF Prospective Payment System (PPS) Payment Driven Payment Model (PDPM)
  - b. Value-Based Payment Models and Programs
  - c. Medicare Advantage and Medicaid Managed Care
  - d. Medicare Part D
  - e. Medicare Health Plan Enrollment for Nursing Facility Residents

The Nursing Facility ICPG also provides new insights on key fraud and abuse laws (e.g., the Anti-Kickback Statute) in the context of relationships among nursing facilities and other providers, such as hospitals, hospice providers, pharmacy suppliers, and physicians, while introducing new areas of consideration not squarely addressed in the 2008 guidance, such as care coordination, value-based care arrangements, and joint ventures.

## USER-FRIENDLY APPROACH

Beyond expanding upon prior analyses of compliance issues unique to nursing facilities, the Nursing Facility ICPG also incorporates visual cues and other structural elements to help ensure readability and ease of reference. Such visual cues and elements include “sidebar” text highlighted in light blue providing background information on areas under discussion, gold-colored text in large-print highlighting important concepts, and, perhaps most notably, a “lightbulb” icon denoting specific recommendations from OIG:



This approach is similar to that used under the GCPG, which used the “Tip” icon for similar effect:



Beyond these visual and organizational elements, the Nursing Facility ICPG also includes embedded links and citations to resources available online, both from OIG and from external sources (professional publications, regulatory text, and other agencies like the CMS). Notably, one of these links is to a “Reimbursement Supplement” provided by OIG that provides an overview of available nursing facility reimbursement under the Medicare and Medicaid programs. In sum, the Nursing Facility ICPG is organized to be helpful both as a tool for in-depth, comprehensive review as well as less-thorough “skimming” for readers hoping to note key concepts without setting aside extensive time to read the document closely from start to finish. In this respect, the Nursing Facility ICPG contrasts significantly with OIG’s 2008 guidance, which consists of “unadorned” text published in the Federal Register.

## WHAT THIS MEANS FOR PROVIDERS

Nursing facilities are encouraged to review the Nursing Facility ICPG in-depth and to give special consideration to its recommendations, particularly those denoted by the above “lightbulb” icon. In its guidance, OIG expresses hope that facilities will be able to operationalize effective compliance programs instead of simply outlining them in written policies that are not put into practice. The foregoing recommendations are geared to help accomplish this aim. Although each facility and its specific compliance risks/opportunities are unique, these recommendations generally represent best practices that can likely benefit all facilities able to adopt them. Otherwise, facilities may consider maintaining copies of the Nursing Facility ICPG (and Reimbursement Supplement) as a resource in connection with periodic compliance program/facility policy updates and staff training. The Nursing Facility ICPG is available on OIG’s website (<https://oig.hhs.gov/>). The above-referenced OIG guidance from 2000 and 2008, as well as the GCPG, are also available on OIG’s website and are accessible through hyperlinks embedded in the text of the Nursing Facility ICPG.

If you have any questions or need further guidance regarding the Nursing Facility ICPG, please contact a member of Hancock Daniel’s [Long-Term Care & Post-Acute Care](#) team.

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