



## Insights from the OIG Work Plan

**A review of the OIG work plan reveals potential enforcement areas in Skilled Nursing & Assisted Living Facilities and how attorneys can help clients be proactive.**

### About the OIG work plan

The Department of Health and Human Services Office of Inspector General (HHS-OIG) work plan provides a wealth of information about OIG enforcement priorities - IF you have time to wade through it. The work plan includes OIG audits and evaluations and is updated monthly. The OIG applies tags to each item. Tags help readers identify work plan items that may be most applicable to their organization.

The information in this brief is based on OIG revisions as of April 17, 2024. There are 245 active work plan items. The April 2024 revision includes a total of 35 distinct tags. The set of tags in use is updated as needed. For example, there is a COVID-19 tag that did not exist prior to the COVID-19 pandemic.

Each unique work plan item may have multiple tags. Examples of tags are Nursing Homes, Nursing Facilities, and Assisted Living Facilities; Hospitals; Medicare A; Medicare B; Medicare C; Medical D; Private Insurance; Quality of Care; etc. The full list of tags that were used in the April 2024 revision can be found in Appendix I of this document.

There is an “Active work plan Items” page that displays all current work plan items. For convenience, new work plan items are found on a “Recently Added” page and completed items can be located on an “work plan Archive” page. Completed work plan items remain on the work plan for 1 month and following that month they are moved to archive status. Reports completed recently appear on a “What’s New” page.

*\* Source: HHS-OIG. (2019, May 15). work plan | Office of Inspector General | U.S. Department of Health and Human Services. <https://oig.hhs.gov/reports-and-publications/work-plan/>*

Focus of this brief: Nursing Homes, Nursing Facilities, and Assisted Living Facilities

The focus of this brief are items tagged with “Nursing Homes, Nursing Facilities, and Assisted Living Facilities.” Selected work plan items are discussed. Not all items are addressed. The comments are LW Consulting, Inc.’s (LWCI) interpretation of the work plan. This brief reflects our understanding and has not been reviewed or verified by OIG. If you are interested in this topic, you may also have an interest in work plan items tagged with Elderly, Quality of Care, and other tags that this space does not permit us to address.

LWCI previously created a summary of mental health and substance abuse items in a brief titled *The OIG work plan: Opportunities for healthcare attorneys working with clients in the mental health and substance abuse disorder space* which [you can access here](#).

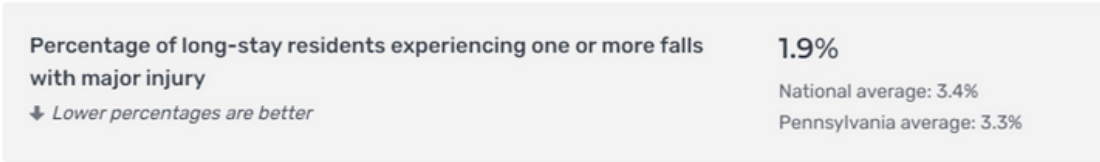
OIG work plan Items Discussion: Opportunities for Attorneys

Are Falls Being Reported Accurately?

Falls can be devastating to the elderly and injuries can take months to resolve. Residents who lose mobility can become isolated and find themselves in chronic pain. Naturally, death from falls is more common in the elderly as compared with younger populations. For example, falls can be critical for elderly on medications that “thin the blood” resulting in bleeding that can be hard to stop. Even falls that do not result in injuries can lead to fears that reduce quality of life.

Attorneys working with Nursing Homes, Skilled Nursing Facilities (SNFs), and/or Assisted Living Facilities (ALFs) take note. There is a new work plan item (added in the March 2024 update) from CMS via the OIG titled *Assessing the Accuracy of Nursing Home Falls Reporting in MDS Assessments*. One stated purpose is to assess the accuracy of the patient assessment data used to calculate nursing home fall rates. The patient fall data, as recorded in assessment data, is used to calculate the percentage of residents experiencing falls resulting in major injury for each certified nursing home. These percentages are made available to the public on CMS’s facility comparison website. <https://www.medicare.gov/care-compare/?providerType=NursingHome>

Digging into the quality measures on the website, users will find the Quality Report Program measures for SNFs. One of these measures is the percentage of residents experiencing one or more falls with a major injury. The measure is calculated separately for short-term and long-term residents. Below is an example of the measure for long-stay residents of a Pennsylvania Nursing Home with results much better than both the State and National averages for this measure.



The approach that will be used is a comparison of claims data of Medicare and dual eligible beneficiaries reporting in patient assessments. Of particular importance is that CMS will be examining the characteristics of residents with major injury who did not have their falls reported as well as the characteristics of nursing homes that did not report falls.

### **How can attorneys prevent unwanted government attention for their senior living clients?**

LWCI, working under attorney-client privilege, has seen a number of cases where falls and skilled nursing home staffing are investigated by various government agencies. In some cases, allegations of worthless services are made. Consequences may be costly or worse.

Attorneys can help prevent problems by bringing additional focus to this issue. Emphasize the importance of reporting resident falls and documenting all falls in patient assessments. Do this often. Do not tolerate the attitude of “If no one witnessed it, don’t report it as a fall.” Non-reporting, if picked up by state survey, will likely be viewed as a “cover-up” and may result in fines and increased scrutiny.

Collaboration with compliance can be beneficial. Ensure that documentation of falls is included in the organization’s risk assessment and annual work plan.

Be sure the DON and Unit Managers are 100% aware of what constitutes the need to report and how to report to both the state and law enforcement entities. Non-reporting should result in disciplinary action up to and including termination. This should be memorialized in job descriptions and in policies and procedures.

As mentioned before, be sure that the fall is documented in the patient assessment. Some SNFs have separate reporting mechanisms that don’t always translate to reporting in the patient assessment. This is not an acceptable practice. Medicare and Medicaid require reporting of resident falls in patient assessments.

### **Part B Billing to Nursing Facility Residents (Optometry)**

Another item of interest was added in January 2024 titled *Optometrists Billing for Part B Services for Medicare Enrollees in Nursing Facilities*.

The summary notes “Opportunities for fraudulent, excessive, or unnecessary Part B billing exist because a Nursing Facility may not be aware of the services for which a provider is billing when submitting a claim to Medicare.” The assessment will take the form of a medical record review including appropriate documentation and billing.

While Optometry is specifically called out, it is of interest that the summary provides mobile x-rays and psychological therapy as other Part B services. LWCI anticipates the review of other Part B services delivered to residents of nursing facilities in the future given the proliferation of organizations offering Part B services to residents.

Attorneys guiding Part B Providers have an opportunity to raise awareness of Government scrutiny. It is LWCI's experience that these organizations do not always have a robust compliance presence. It is especially important that an audit for medical necessity, documentation, and billing be conducted in these organizations to assess and mitigate risk.

### **Staffing and Payroll-Based Journal (PBJ)**

No discussion about nursing facilities is complete without some mention of staffing. In the context of the OIG work plan, an item added in November of 2023 is titled *Audit of Nursing Homes' Nurse Staffing Hours Reported in CMS's Payroll-Based Journal*. This is in addition to the item added in January 2023 titled *Assessment of CMS's Early Use of Payroll-Based Journal Data to Improve Enforcement of Nursing Home Staffing Standards*.

It is clear there is an increased focus on Payroll-Based Journal (PBJ) staffing data. LWCI surmises that early results of the January 2023 work has lead to a deeper dive.

The summary of the November 2023 item states:

*"Nursing homes are required to electronically submit complete and accurate direct care staffing information to CMS's Payroll-Based Journal (PBJ) system on a quarterly basis. Direct care staff include nurse and non-nurse staff who, through interpersonal contact with nursing home residents or resident care management, provide care and services to residents to allow them to attain or maintain the highest practicable physical, mental, and psychosocial well-being. CMS and other stakeholders use the staffing information in the PBJ to: (1) measure nursing home performance, (2) better understand the relationship between nursing home staffing levels and the quality of care that nursing homes provide, (3) identify noncompliance with Federal nurse staffing regulations, and (4) facilitate the development of nursing home staffing measures. We will review the nurse staffing hours reported in the PBJ to determine whether the reported hours are accurate."*

LWCI anticipates the resulting report, expected to be released in 2025, will become the subject of much discussion and debate and eventually policy. We further anticipate enforcement action where accuracy is poor and data shows Federal nurse staffing regulations are not met.

In the January 2023 item, we find that CMS instructed State surveyors to use PBJ data to investigate specific instances of noncompliance with hourly staffing standards (for example, the requirement to have a registered nurse on duty for a minimum of 8 hours per day). CMS has a stated strategy to use PBJ data to improve the enforcement of Federal nursing home staffing standards by State surveyors.

Attorneys have an opportunity to be sure that direct care staff are accurately designated with no “gaming” the system. Again, collaboration with compliance with respect to the risk assessment and audit plan is recommended.

## APPENDIX I: OIG Workplan April 2024

- Hospitals
- Children and Families
- Contracts
- COVID-19
- Departmental Operational Issues
- Dependent Care
- Elderly
- Emergency Preparedness and Response
- Financial Stewardship
- Food, Drug, and Device Safety
- Grants
- Information Technology and Cybersecurity
- Laboratories
- Managed Care
- Medicaid
- Medical Supplies and Equipment
- Medicare A
- Medicare B
- Medicare C
- Medicare D
- Mental Health
- Native Americans
- Non-institutional care
- Nursing Homes, Nursing Facilities, and Assisted Living Facilities
- OIG Statutory Authority and Regulatory Matters
- Other Funding
- Other Minorities
- Other: Health Disparities
- People with Disabilities
- Physician and Healthcare Practitioners
- Prescription Drug
- Private Insurance
- Public Health Issues
- Quality of Care
- Substance Abuse Disorders

**Do you or your client require expert assistance with the OIG work plan or auditing associated documentation?** LW Consulting, Inc. can help! Our team can audit your documentation & coding with the work plan in mind. Learn more on our website at [www.lw-consult.com](http://www.lw-consult.com).

