the assessment, reporting, and evaluation of resident case-mix data as a significant risk area for SNFs.[74]

Because of the critical role resident case-mix data play in resident care planning and reimbursement, training on the collection and use of case-mix data is important. An effective compliance program will include training of responsible staff to ensure that persons collecting the data and those charged with analyzing and responding to the data are knowledgeable about the purpose and utility of the data. Facilities must also ensure that data reported to the Federal Government are accurate. Both internal and external periodic validation of data may prove useful. Moreover, as authorities continue to scrutinize quality-reporting data,[75] nursing facilities are well-advised to review such data regularly to ensure their accuracy and to identify and address potential quality of care issues.[76]

2. Therapy Services

The provision of physical, occupational, and speech therapy services continues to be a risk area for nursing facilities. Potential problems include: (i) Improper utilization of therapy services to inflate the severity of RUG classifications and obtain additional reimbursement; (ii) overutilization of therapy services billed on a fee-for-service basis to Part B under consolidated billing; and (iii) stinting on therapy services provided to patients covered by the Part A PPS payment.[77] These practices may result in the submission of false claims.[78]

In addition, unnecessary therapy services may place frail but otherwise functioning residents at risk for physical injury, such as muscle fatigue and broken bones, and may obscure a resident's true condition, leading to inadequate care plans and inaccurate RUG classifications.[79] Too few therapy services may expose residents to risk of physical injury or decline in condition, resulting in potential failure of care problems.

OIG strongly advises nursing facilities to develop policies, procedures, and measures to ensure that residents are receiving medically appropriate therapy services.[80] Some practices that may be beneficial include: Requirements that therapy contractors provide complete and contemporaneous documentation of each resident's services; regular and periodic reconciliation of the physician's orders and the services actually provided; interviews with the residents and family members to be sure services are delivered; and assessments of the continued medical necessity for services during resident care planning meetings at which the attending physician attends.

3. Screening for Excluded Individuals and Entities

No Federal health care program payment may be made for items or services furnished by an excluded individual or entity.[81] This payment ban applies to all methods of Federal health care program reimbursement. Civil monetary penalties (CMP) may be imposed against any person who arranges or contracts (by employment or otherwise) with an individual or entity for the provision of items or services for which payment may be made under a Federal health care program,[82] if the person knows or should know that the employee or contractor is excluded from participation in a Federal health care program.[83]

To prevent hiring or contracting with an excluded person, OIG strongly advises nursing facilities to screen all prospective owners, officers, directors, employees, contractors,[84] and agents prior to engaging their services against OIG's List of Excluded Individuals/Entities (LEIE) on OIG's Web site,[85] as well as the U.S. General Services Administration's Excluded Parties List System.[86] In addition, facilities should consider implementing a process that requires job applicants to disclose, during the pre-employment process (or, for vendors, during the request for proposal process), whether they are excluded. Facilities should strongly consider periodically screening their current owners, officers, directors, employees, contractors, and agents to ensure that they have not been excluded since the initial screening.

Facilities should also take steps to ensure that they have policies and procedures that require removal of any owner, officer, director, employee, contractor, or agent from responsibility for, or involvement with, a facility's business operations related to the Federal health care programs if the facility has actual notice that such a person is excluded. Facilities may also wish to consider appropriate training for human resources personnel on the effects of exclusion. Exclusion continues to apply to an individual even if he or she changes from one health care profession to another while excluded. That exclusion remains in effect until OIG has reinstated the individual, which is not automatic.[87] A useful tool for the training is OIG's Special Advisory Bulletin, titled ''The Effect of Exclusion From Participation in Federal Health Care Programs.'' [88]

4. Restorative and Personal Care Services

Facilities must ensure that residents receive appropriate restorative and

[74] To the extent a State Medicaid program relies upon RUG classification, or a variation of this system, to calculate its reimbursement rate, nursing facilities, as defined in section 1919 of the Act (42 U.S.C. 1396r), should be aware of this risk area as well.

[75] *See, e.g.*, CMS, ''2007 Action Plan for (Further Improvement of) Nursing Home Quality,'' September 2006, available on CMS's Web site at *http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/2007ActionPlan.pdf.*

[76] In addition to assisting facilities with ensuring that claims data are accurate, monitoring MDS data may assist facilities in recognizing common warning signs of a systemic care problem (*e.g.*, increase in or excessive pressure ulcers or falls).

[77] There may be additional risk areas for outside therapy suppliers.

[78] Additional risks related to the anti-kickback statute are discussed below in section III.C.

[79] *See* 42 CFR 483.20(b) and (k).

[80] *See* OIG, OEI Report OEI–09–99–00563, ''Physical, Occupational, and Speech Therapy for Medicare Nursing Home Patients: Medical Necessity and Quality of Care Based on Treatment Diagnosis,'' August 2001, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-09–99–00563.pdf.*

[81] 42 CFR 1001.1901. Exclusions imposed prior to August 5, 1997, cover Medicare and all State health care programs (including Medicaid), but not other Federal health care programs. *See* The Balanced Budget Act of 1997 (Pub. L. 105–33) (amending section 1128 of the Act (42 U.S.C. 1320a–7) to expand the scope of exclusions imposed by OIG).

[82] Such items or services could include administrative, clerical, and other activities that do not directly involve patient care. *See* section 1128A(a)(6) of the Act (42 U.S.C. 1320a–7a(a)(6)).

[83] *Id.*

[84] A nursing facility that relies upon third-party agencies to provide temporary or contract staffing should consider including provisions in its contracts that require the vendors to screen staff against OIG's List of Excluded Individuals/Entities before determining that they are eligible to work at the nursing facility. Although a nursing facility would not avoid liability for violating Medicare's prohibition on payment for services rendered by the excluded staff person merely by including such a provision, requiring the vendors to screen staff may help a nursing facility avoid engaging the services of excluded persons, and could be taken into account in the event of a Government enforcement action.

[85] Available on our Web site at *http://oig.hhs.gov/fraud/exclusions/listofexcluded.html.*

[86] Available at *http://www.epls.gov/.*

[87] Reinstatement of excluded entities and individuals is not automatic. Those wishing to again participate in the Medicare, Medicaid, and all Federal health care programs must apply for reinstatement and receive authorized notice from OIG that reinstatement has been granted. Obtaining a provider number from a Medicare contractor, a State agency, or a Federal health care program does not reinstate eligibility to participate in those programs. There are no provisions for retroactive reinstatement. *See* 42 CFR 1001.1901.

[88] OIG, ''The Effect of Exclusion From Participation in Federal Health Care Programs,'' September 1999, available on our Web site at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/effected.htm.*