

Eli's Hospice Insider

COMPLIANCE: 4 Compliance Hotspots You Must Watch

Take special care in hospice/nursing home arrangements.

The OIG has hospice agencies in its sites with over two dozen areas on its watch list. Tighten up your compliance plan to make sure your compliance plan is covering all the bases.

Hold the Rewards for Referral Sources

The OIG has identified 28 total risk areas for abuse in hospice programs, says attorney **Mary Michal**, with Reinhart Boerner Van Deuren in Madison, Wis. But you should take special care when dealing with levels of higher reimbursement such as the following, she says:

1. Offering incentives to actual or potential referral sources (physicians, nursing homes, hospitals, etc.). It's possible in contracting for general inpatient care (GIP) or offering continuous care that your hospice could get in trouble for offering an incentive.

"We hear complaints quite frequently that some hospices are saying to the hospital 'We will automatically put your patients on our GIP benefit and keep them in your hospital for a certain number of days.'" Michal says. That's not individualized care planning and can result in a huge risk for the hospice, she warns. Another risk is to say to the nursing home, "At the end of life, we will always provide continuous care," Michal says. "That's not individualized care, either. And it's very clear that [the Centers for Medicare & Medicaid Services] (CMS) does not consider imminent death a reason to put people on continuous care in all cases."

Avoid Abuse Allegations in SNF Partnerships

The OIG has targeted hospice and nursing home arrangements for scrutiny because they believe these partnerships to be vulnerable to fraud and abuse, Michal says. Two practices the OIG sees as constituting potential kickbacks are:

- The hospice offering free or below fair market value goods to induce the skilled nursing facility to refer patients to hospice.
- The hospice providing staff at its expense to the skilled nursing facility to perform duties otherwise performed by the skilled nursing facility. For example, if the hospice is promising to provide continuous home care in the skilled nursing facility, this could be a problem, Michal says.

If your hospice is providing GIP and routine home care in the nursing home, and also offering continuous home care, you could run into trouble. Continuous home care and GIP are so similar, you need to document really closely why the patient would be using GIP instead of continuous care, Michal warns.

Take note: The OIG released a study examining compliance with Medicare coverage requirements for hospice patients in nursing facilities in the fall of 2009, says attorney **Mary McCormack** with Reinhart Boerner Van Deuren. The report found that eighty-two percent of hospice claims for beneficiaries in nursing facilities did not meet at least one Medicare coverage requirement. Eighty-one percent of which did not meet at least one requirement pertaining to election statements, plans of care, services, or certifications of terminal illness. While it remains unclear what action, if any, will come about based on this study, it's a good time to take a look at documents and processes to make certain your in compliance with these coverage requirements, McCormack says.

2. Billing for a higher level of care than is necessary. If you cannot establish medical necessity for higher levels of care, this is a risk area under fraud and abuse, Michal says.

\3. **Providing inadequate management** and oversight of contracted services. If you have a contract with a nursing home and the nursing home is calling the shots as to whether the patient is receiving GIP or routine home care, that would be a risk, Michal cautions.

By the same token, if you're working with a nursing home that you know to be a problem nursing home, and you know that they are not providing the services that you contracted with them for, that could constitute a huge risk area, too, Michal says. In such a situation, you can't show that the care is really being managed by your hospice. "Make sure you have good partners in your contracting because a partner who has trouble with documentation or quality of care could bring the hospice down as well."

4. Failing to adhere to Medicare conditions of participation (CoPs). Any time you are cited on a survey for CoP problems, such as inadequate care planning, it could also result in a fraud and abuse risk, Michal says.