

Eli's Hospice Insider

Compliance: OIG OKs Free Program Offering Non-Skilled Services

3 factors keep proposed arrangement in the clear.

The OIG has put its stamp of approval on one hospice's free bridge program, but don't assume that gives you carte blanche to offer free services to potential patients.

A hospital-based hospice asked the **HHS Office of Inspector General** to green light "a volunteer program to provide non-skilled services to terminally ill patients who do not qualify for hospice care," says recently issued Advisory Opinion No. 12-17. The program would be available to those who have up to a one-year diagnosis and/or who have not given up curative treatment.

The program would offer non-skilled services such as "companionship, visitation, transportation in the volunteers' personal automobiles, running errands, food preparation, respite for caregivers, and assistance with reading and writing" from unpaid volunteers, the opinion notes. Patients would have to live in their own homes to be eligible, not skilled nursing facilities.

Funding: The program's costs would include a volunteer coordinator salary. The hospital parent's foundation would help the hospice raise funds for the program's first year of operation. "After that, if the Hospital determines that the Proposed Arrangement has fulfilled an unmet need in the community, the Hospital would fund the Proposed Arrangement going forward," the opinion says.

The hospice wouldn't market the program, although it "would educate local hospital case managers," as well as physician practices and family members if they request it. The hospice "would give the patient a packet that would include a letter explaining the patient's right to choose a provider if the patient should need home health or hospice services in the future and a list of known agencies within the patient's service area," the opinion continues.

The program "could influence the patients to select the [hospice] as their provider of hospice services in the future," the OIG acknowledges in the opinion. But it still gives the program its approval due to these factors:

- 1. No marketing.** The OIG likes that the hospice will hand out a list of providers. "Although patients could ultimately select the [hospice] as their provider of hospice services in the future, the [hospice] would have given the patients information to exercise their freedom of choice in selecting a provider," the OIG notes.
- 2. No cost to Medicare.** The volunteer services are free and any costs would not be included on the hospice or hospital cost report.
- 3. Inexpensive benefits.** Because the program offers "services of relatively small monetary value provided by unpaid volunteers, the requirement that hospice patients forego curative care for their underlying terminal illnesses provides a safeguard against the overutilization often associated with such inducements."

Warning: "Our recognition that hospice care may appeal only to a subset of qualifying patients -- those patients who are comfortable renouncing coverage for curative medical treatment for a terminal condition -- does not mean that hospice providers can offer patients inducements to elect hospice," the OIG stresses.

The OIG's approval of the program, despite its offer of free services, isn't a surprise, say hospice legal experts. The watchdog agency approved a similar program proposed by the **Hospice of Martin & St. Lucie** back in 2000, notes attorney **Connie Raffa** with **Arent Fox** in New York City. Volunteer, non-skilled services and charity funding were features the proposals had in common, Raffa points out.

The lack of advertising for the program is also a crucial component, says attorney **Deborah Randall** with **Deborah Randall Consulting** in Washington, D.C.

The proposed program is "very beneficial to the community and the hospital did what it could to lessen the likelihood that it would generate referrals," says attorney **John Gilliland II** with **The Gilliland Law Firm** in Indianapolis. "If a program is valuable to patients/community and the provider establishes it in a way that it is obviously not set up to be a money maker and induce referrals, it is likely, but not guaranteed, that the OIG will find it to be acceptable," Gilliland concludes.

The OIG's reasoning that low-cost services likely won't influence the decision to forego curative care "is very interesting," Raffa tells **Eli**. "That is a hard decision, which is influenced by family, as well as the patient. Developing a relationship, through their volunteer program, with a particular hospice probably does impact the decision of what hospice to choose. However, I think the OIG looked at the big picture and saw the common good."

Note: The new advisory opinion is at <https://oig.hhs.gov/fraud/docs/advisoryopinions/2012/AdvOpn12-17.pdf>. The 2000 opinion is at https://oig.hhs.gov/fraud/docs/advisoryopinions/2000/ao00_3.htm.