

Eli's Hospice Insider

Compliance: Use These 8 Tips To Protect Yourself From Nursing Home-Related Scrutiny

When's the last time you updated your compliance plan?

Smart hospices will be correcting any nursing home patient-related problems themselves, before claims get caught up in medical review or surveyors walk through the door.

The **HHS Office of Inspector General** recently shone a light on potential problems with hospices that serve nursing home patients, especially high concentrations of them (see Eli's Hospice Insider, Vol 4, No. 9). And the **Centers for Medicare & Medicaid Services** fully agrees with the OIG's recommendations to combat the problem.

"CMS ... should closely examine whether these hospices are meeting Medicare requirements," the OIG urges in the report, "Medicare Hospices That Focus On Nursing Facility Residents."

CMS likes that recommendation. The agency "will share the information included in this report with the Recovery Auditors and Medicare Administrative Contractors," CMS says in its response letter to the report. And it will "emphasize ... the importance of this issue when prioritizing their medical review strategies or other interventions."

Use this expert advice to ward off payment and compliance problems stemming from your nursing home relationships:

1. Make sure you're going by the rules. Ignorance is no excuse, and that's especially true when it comes to medical reviewers and surveyors. "Any hospices that serve NF residents would be wise to adhere to the OIG guidance," counsels attorney **Kendra Conover** with **Hall Render** in Indianapolis. The OIG has issued hospice-specific compliance guidance for compliance plans, as well as advisory documents such as advisory opinions.

"All providers should have a compliance plan in place," stresses attorney **Marie Berliner** with **Lambert & Berliner** in Austin, Texas.

Don't limit your review to just OIG documents. "The federal hospice regulations that became final in 2008 specifically define the responsibility of both the hospice and the NF for hospices providing care to NF residents. Corresponding regulations applicable to NFs were published last year," Conover points out. "Both the hospice and the NF must carefully review their respective duties of care to the hospice patient and NF resident to ensure they are both compliant with the federal regulations."

2. Implement your plan. It's not enough to have a beautifully complete compliance plan sitting on your shelves -- you have to use it. "Stick to it," Berliner exhorts.

3. Focus on problem areas. The OIG, CMS and the **Medicare Payment Advisory Commission** have pinpointed hospices serving nursing home patients as a trouble spot for payment and compliance. Give special attention to this area to make sure you're going by the rules -- and can prove it.

Marketing and patient enrollment in nursing homes is a particular hot spot, Conover advises. The OIG plans further reports on marketing practices and business relationships with NFs, it says in its report.

4. Assess yourself. Another way to identify problem areas is to monitor what the local MACs and RACs are up to, Berliner recommends. Then "conduct self-assessments based on published activity."

5. Benchmark yourself. The OIG provides a wealth of statistics about serving nursing home patients in its new report.

Check yourself against those figures to see if you'll stand out on reviewers' or surveyors' radars.

For example: The average amount of patients exceeding the six-month mark for hospice services is 21 percent, the OIG says. "If you are well above that number, you might want to review your admissions process," recommends attorney **Robert Markette Jr.** with **Benesch Friedlander Coplan & Aronoff** in Indianapolis.

And check your own internal benchmarks. "If your NF patients are routinely living significantly longer than your at-home patients, can you explain why?" Markette asks. "What diagnoses are you routinely admitting in the facility?"

6. Say no to kickbacks. Sometimes hospices give in to admitting patients who are marginally eligible for hospice as a "favor" to the nursing home, Markette observes. Be warned, that is a kickback violation.

"If you don't think a patient is appropriate, say no," Markette urges. "If the NF pressures you, you should stand firm and your staff should know how to respond, including who to report to in the agency to make sure that the hospice is addressing this at the appropriate level."

Sometimes kickbacks are hard to recognize. "The challenges of sorting out who is responsible for what services is a longstanding one in the hospice-NF world," Berliner laments. "Unfortunately, if a hospice provides 'too many' services to a NF patient, it could be construed as a kickback to the facility, especially where SNF consolidated billing rules require the nursing facilities to provide the items and services and bill for them under the consolidated billing rules."

7. Beef up your documentation. The OIG is focusing on nursing home patients who exceed the six-month mark, so be sure that you are documenting terminal illness comprehensively in your records. "Hospices serving patients in NFs need to be very clear on what is a terminal illness and documenting the patient is actually terminal," Markette stresses.

"Be prepared to defend claims," Markette says. "This means being clear on terminal illness, physician certifications, etc."

8. Eye acquisitions carefully. You don't want to inherit the reimbursement or compliance problems that may be lurking beneath the surface of a seemingly attractive acquisition target. "If a hospice is acquiring another hospice that serves a high number of NF residents the acquiring hospice [should] carefully examine the relationship between the other hospice and the NF to make sure it adheres to all applicable federal regulations and OIG guidance," Conover advises.

Note: The OIG report is online at <http://oig.hhs.gov/oei/reports/oei-02-10-00070.pdf>. The OIG's hospice compliance guidance is at <http://oig.hhs.gov/compliance/compliance-guidance/index.asp> --scroll down to the 09-30-1999 entry.