

Eli's Hospice Insider

Fraud & Abuse: Beware This Kickback Danger With Nursing Homes

Don't give extra hospice services to nursing homes, even when they ask.

The excuse of "everybody's doing it" won't hold water when the feds show up to examine your hospice-nursing home interactions.

The hospice section of the 2012 **HHS Office of Inspector General** work plan says the agency "will review hospices' marketing materials and practices and their financial relationships with nursing facilities." The work plan goes on to point out that the **Medicare Payment Advisory Commission** "has noted that hospices and nursing facilities may be involved in inappropriate enrollment and compensation. MedPAC has also highlighted instances in which hospices aggressively marketed their services to nursing facility residents."

Watch out: "We will focus our review on hospices that have a high percentage of their beneficiaries in nursing facilities," the work plan states (see story on the OIG's related report, Eli's Hospice Insider, Vol. 4, No. 9, p. 60).

"What we know the OIG is looking at by virtue of their very articulate posting on the Internet, in congressional testimony " and in the recently released OIG 2012 work plan " is improper relationships between hospices and nursing homes," says attorney **Paula Sanders** with **Post & Schell** in Harrisburg, Pa. "That part is focused on hospice marketing and what hospices are telling nursing homes. But on occasion, we see nursing homes in areas with high hospice penetration asking for additional services in order to allow hospice into their facility," she adds.

"The fact that might be a standard in the market doesn't make it legal," Sanders warns. Staff should be aware of the anti-kickback requirements, she urges.

Sanders also notes that one frequent compliance issue related to hospice in nursing facilities is "inconsistent billing where the nursing home pharmacy is billing the resident separately [or a payer] for medications covered by the hospice."

"Sometimes it's a judgment call and a clinical decision where you have to sit down as a team and evaluate the patient and figure out which drugs are related to the terminal illness that hospice is responsible for," says attorney **Connie Raffa** with **Arent Fox** in New York City.

Also watch out for "poor communication and poor documentation between the hospice and nursing home [so that] the care plans don't align -- or the nurses at the respective organizations don't understand the delineation of their responsibilities," Sanders adds.

Note: A transcript from an OIG podcast on the agency's recent report, "Medicare Hospices That Focus on Nursing Facility Residents," is at <http://oig.hhs.gov/newsroom/podcasts/2011/nudelman.asp>. The report is at <http://oig.hhs.gov/oei/reports/oei-02-10-00070.pdf>.