

Eli's Hospice Insider

Fraud & Abuse: Brace Yourself For Increased Scrutiny Of Nursing Facility Residents

Hospices with lots of nursing home patients are suspicious, new OIG report says.

You may have to think long and hard about furnishing services to nursing home patients if a new payment recommendation by the OIG gets adopted.

In a new report, the **HHS Office of Inspector General** calls for lawmakers and the **Centers for Medicare & Medicaid Services** to cut payments to hospices for patients that reside in nursing homes. "The current payment structure provides incentives for hospices to seek out beneficiaries in nursing facilities, who often receive longer but less complex care," the OIG says. "To lessen this incentive, CMS should reduce Medicare payments for hospice care provided in nursing facilities, seeking statutory authority, if necessary."

Hospices and nursing homes may be providing duplicative services, the OIG implies. "Unlike private homes, nursing facilities are staffed with professional caregivers and are often paid by third-party payers, such as Medicaid," the report notes. "These facilities are required to provide personal care services, which are similar to hospice aide services that are paid for under the hospice benefit."

The statistics showing the rise of hospice spending in nursing homes and so-called "high-percentage" hospices -- those with a higher-than-average number of nursing home residents as patients -- concerns the OIG (see stats in related box, p. 62).

"Some hospices may be seeking out beneficiaries with particular characteristics, including those with conditions associated with longer but less complex care," the OIG worries. "Such beneficiaries are often found in nursing facilities. By serving these beneficiaries for longer periods, the hospices receive more Medicare payments per beneficiary, which can contribute to higher profits."

The **Visiting Nurse Associations of America** "applauds" the report, the trade group says in a release. "We strongly agree that federal laws and regulations must eliminate incentives for financial gain by hospices that recruit certain types of patients in nursing homes," VNAA says.

Another party that agrees is CMS itself. "The incentives may exist in the current payment structure," CMS says in its response letter to the OIG's report. As required by the Affordable Care Act, CMS is currently undertaking hospice payment reform and will use data analysis and a technical expert panel to inform the process. The reformed system will take effect "no earlier" than October 2013, CMS notes.

Are High-Percentage Hospices Really So Different?

But such a payment system change could have some unintended consequences, industry experts predict. If CMS implements pay cuts for patients in nursing facilities, "we will likely see certain hospice providers limit or cease their provision of care to NF residents," foresees attorney **Kendra Conover** with **Hall Render** in Indianapolis.

Such cuts "would make it very difficult to serve patients in facilities," predicts attorney **Robert Markette Jr.** with **Benesch/Dann Pecar** in Indianapolis.

Hospices pulling back on serving nursing home patients could result in an access problem for such NF residents, experts warn.

The OIG may be carrying its findings a bit too far, Markette tells **Eli**. The watchdog agency found only 8 percent of hospices served more than two-thirds of their beneficiaries in nursing homes, qualifying them as high-percentage. "OIG is recommending changes in payments to all hospices providing care in NFs, because of its concern regarding [only] 8 percent of all hospices," Markette criticizes.

And there's no evidence that even those high-percentage hospices are doing anything wrong. "The mere fact that there is higher hospice utilization for NF residents does not necessarily mean that the hospice services are inappropriate," says attorney **Marie Berliner** with **Lambert & Berliner** in Austin, Texas. "To the contrary, there could be better and earlier identification of hospice-appropriate NF residents."

There isn't even a big difference in some of the statistics the OIG cites, Markette points out. For example, highpercentage hospices had 28 percent of beneficiaries receive hospice services six months or more, while regular hospices had 21 percent do so. "That is not a huge discrepancy," he notes.

If CMS adopts reduced payments for nursing home patients as part of payment reform, the agency will "be punishing everybody for the perceived sins of 8 percent of the provider population," Markette concludes.

New world: Hospices that continue to service nursing home patients under reduced payment rates "will surely feel the squeeze," Berliner expects.

Coupled with possible payment rate rebasing under the payment reform initiative, cuts for nursing home patients could be "disastrous," Markette warns.

Hospices that continue to serve nursing home patients under reduced payment would have to "find methods that will improve efficiencies in care that is provided to NF residents," Conover advises.

In that case, hospices "will likely be more careful about reviewing the services that the SNFs/NFs are required to furnish," Berliner forecasts. That's especially true "for SNF patients who have conditions unrelated to the terminal illness, or for Medicaid recipients, for whom the states pay room and board and often cover other items and supplies."

MACs And RACs May Put Hospices Under The Microscope

The OIG makes another recommendation that could have a more immediate impact on your operations and bottom line: increased scrutiny for high-percentage hospices. "CMS ... should closely examine whether these hospices are meeting Medicare requirements," the OIG urges.

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

Another fan: "VNAA appreciates CMS's swift actions to share information from the OIG report with contractors that will review claims," the trade group cheers.

Hospices with nursing home-residing patients should consider the report "a warning shot," Conover cautions. The government is letting bad actors know it "is aware that there may be some inappropriate behavior by some hospices servicing NFs and that the government is taking steps to remedy and further prevent such behavior."

Off the hook? "Nursing homes must also be held accountable," insists VNAA's **Andy Carter**. The trade group "strongly urges that federal laws and regulations focus on how to remove incentives for nursing homes to engage with hospices in similar behaviors."

So far, RACs have mostly left hospices alone. But urging from CMS and the OIG could change that. "We would not be surprised to see an increase in RAC activity down the road, given the scrutiny that CMS has focused on the for-profit hospice industry," Conover tells **Eli**.

It's likely the RACs will "take the lead from the OIG in this area and increase scrutiny of both hospice and nursing facility

providers," Berliner predicts.

However: This issue lacks one thing that RACs usually like in their audit topics -- easy automated record review. "This type of review will require [RACs] to perform a complex review and may not be considered lucrative enough," Markette says.

Keep an eye on the RACs' websites to see if they post any related topics on their CMS-approved audit lists. "That will be the first sign of coming RAC activity," Markette explains.

Note: For tips on how to protect yourself against the oncoming scrutiny of nursing home patients, see the next issue of Eli's Hospice Insider.

The OIG report is online at <http://oig.hhs.gov/oei/reports/oei-02-10-00070.pdf>.