

Eli's Hospice Insider

READER QUESTION: Is It OK for Hospices to Have HHAs Provide Home Care Services Unrelated to a Hospice Patient's Terminal Illness?

The answer isn't black and white -- here's what your hospice needs to consider, say experts.

Question: Our hospice has been considering approaching a home health agency to provide home care services unrelated to some of our hospice patients' terminal illness. Is this allowed by Medicare?

Louisiana Reader

Answer: Medicare does allow home health agencies to furnish services unrelated to the terminal illness to hospice patients, "but it can be tricky," warns Washington, D.C.-based attorney **Elizabeth Hogue**.

"The sixty-four-thousand-dollar question is, of course, when something is related or unrelated," Hogue tells **Eli**.

Example: Hogue recalls a patient who had a long history of osteoporosis and metastatic cancer to the bone. When she broke her hip, was it due to the osteoporosis, the cancer (which was the reason for hospice), or both?

"It was ultimately attributed to the terminal illness ... and the hospice paid for the repair," Hogue says.

The **Centers for Medicare & Medicaid Services** believes instances of HHAs furnishing services to hospice patients would be "rare but ...permissible," says **Janet Neigh** with the National Association for Home Care & Hospice.

Tip: "The physician would have to make the decision as to whether the conditions are related," Neigh says of the confusing issue. But don't expect a simple physician determination to keep your claims clear, says attorney **Robert Markette Jr.** with **Gilliland & Markette** in Indianapolis. In such cases, you will need to document very carefully how the condition you're treating is unrelated to the terminal illness, he advises.

"Otherwise, it looks like Medicare is paying twice," he warns. HHAs considering furnishing services to hospice patients must exercise caution, he urges.

They need to be careful not to "stumble into" kickback or fraud situations. "There are a lot of folks who get into trouble by accident," Markette tells **Eli**.

Red flag: It may be easy to document when nursing and other skilled services are unrelated to terminal illness. But showing when aide services are unrelated could get more complicated, Markette worries HHAs that want to avoid risky behavior may choose not to provide this kind of service altogether, Markette believes.

Reasoning: It's an uncommon practice and may raise eyebrows with regulators like the HHS Office of Inspector General, he predicts. While hospices don't generally generate a lot of HHA referrals, they could be seen as drumming up business for their own referrals from HHAs. "Hospices and home health are under scrutiny already," Markette notes. "Why raise the red flag?" Hospices that participate in such arrangements should remember that the new hospice Conditions of Participation (CoPs) require them to coordinate with other healthcare providers, reminds attorney **Mary Michal** with **Reinhart Boerner Van Deuren** in Madison, Wis.

Good idea: Due to its unusual nature and risk for antikickback and other implications, Markette recommends running any such arrangements past legal counsel. Keep in mind that hospices are also allowed to contract with HHAs to provide non-core hospice services, Michal adds. Just make sure the hospice pays fair market value for the HHA's services, experts advise.

Note: Do you have a pressing reimbursement, regulatory, or clinical question you'd like the experts to answer? If so, please send your inquiry to editor Karen Lusky, MSN, RN, at KarenL@Eliresearch.com.

Please put "Reader Question" in the subject line.