

## Long-Term Care Survey Alert

### Compliance: Beware: Hospice-SNF Relationships Under The Microscope

Learn a valuable lesson from Hernando-Pasco Hospice's fate.

As you work out agreements with Medicare-certified hospices as required by the new CMS rule, be wary of offers from hospices that include kickbacks for collaborative arrangements.

**Case in point:** A recent whistleblower lawsuit resulted in a \$1 million settlement of False Claims Act charges for Tampa, Fla.-based **Hernando-Pasco Hospice Inc.** Among the many charges leveled by two former social work employees against HPH are providing kickbacks via free nursing and caregiver services to skilled nursing facilities and other referral sources.

"HPH offers to care for [these institutions' and providers'] patients for free until such time as the patients are referred to hospice," said the qui tam complaint filed by **Heather Numbers** and **Greg Davis**, who had longstanding careers as social workers and managers at the company.

**For example:** "HPH ... offers 'free' or 'support' services to the SNF during the 'skilled days' in exchange for the referral once those days are exhausted," the complaint alleged. Medicare pays for the skilled days for 21 days after a qualifying hospital stay. Furthermore, HPH developed a charting system separating "support service" days from regular hospice benefit days to evade detection of the scheme, the whistleblowers contend in the suit.

HPH also offered "support services" to assisted living facilities when patients were on a "break" from hospice care to avoid suspiciously long hospice stays, the complaint claimed.

Watch For Big Dollar Cases Coming Down The Pike

SNFs may be the hottest of the hospice hot button topics, suggests attorney **Deborah Randall** with **Deborah Randall Consulting** in Washington, D.C. This settlement has a relatively reasonable value, but keep your eyes peeled for much bigger figures on the horizon. "The 'big' case for kickbacks with SNFs and longterm care providers is yet to come, and many hospice investigations are under way," Randall warns.

**Remember:** The **Centers for Medicare & Medicaid Services** is floating the idea of reducing payment rates for hospice patients in nursing homes, under hospice payment reform, according to CMS's 2014 hospice payment proposed rule.

"Hospice patients in a NF/SNF receive more visits than patients at home, though the length of those visits is shorter," CMS discovered in analysis of claims data. "Given the presence of the paid caregiver in the NF/SNF, we would expect that on average, there would be fewer hospice aide services provided to hospice patients in a NF/SNF than to hospice patients at home," CMS says in the rule.

**Per patient contracts?** Some nursing facility agreements require hospices to sign individual contracts naming each patient rather than one general contract covering all patients in a nursing home. Hospice officials worry that individual contracts would make it difficult to comply with the rule to have the contract signed and in place before hospice service begins for the patient.

CMS confirms that nursing homes are free to structure their contracts any way they like, as long as the contracts comply with the regulatory requirements, noted CMS's **Danielle Shearer** in a July 9 Open Door Forum for home care providers. "That is a business practice that we intend to keep our nose out of." Further, "we try to interfere as little as possible in contractual relationships," she added.