Long-Term Care Survey Alert

RISK MANAGEMENT: Beware Aberrant Prescribing Patterns Linked to a Provider's Financial Interest in a Product

The OIG 2010 work plan includes looking at this kind of drug use.

Imagine reading a newspaper article about an attending physician at your facility who has a strong financial incentive to prescribe certain services or drugs.

That scenario actually occurred in the case of a Chicago psychiatrist who reportedly received almost a half million in revenue from a drugmaker over the years to promote its antipsychotic medication. An article in the Chicago Tribune quoted a case manager at a nursing home expressing concerns that the doctor prescribed more medications for residents compared to other psychiatrists when she worked there.

"(His patients) would have symptoms; they'd have all these side effects; and their doctor was not listening," the Tribune reported the case manager as saying. In discussing the case with Eli, plaintiff attorney **Steve Levin** in Chicago reports he sees "an epidemic" of the use of antipsychotics and related psychoactive medications in nursing homes, which can lead to many negative outcomes, including falls, he says.

Antipsychotic drugs -- both the first generation and the atypicals -- have also been linked to insulin resistance and type 2 diabetes. New York, which has been data mining Medicaid claims, found that 8,879 New York Medicaid nursing home patients were prescribed atypical antipsychotics in 2007 or 2008 -- and 3,589 had no history of a diagnosis of psychosis, according to a presentation by **Jim Sheehan,** New York Medicaid Inspector General (www.rockinst.org/forumsandevents/). And 330 patients had a reported diabetes diagnosis since receiving the antipsychotics, he reported.

The federal government has been targeting off label use of antipsychotics to treat nursing home residents' dementia-related behavioral symptoms. The Office of Inspector General (OIG)'s 2010 Work Plan cites its continuing efforts to look at antipsychotic drug use in nursing homes.

Identify Potential Problems

What can nursing facilities do to prevent physicians from allowing a financial relationship with a drug or other company drive resident care in the wrong direction? First of all, recognize that the facility may be vulnerable to fraud-and-abuse woes of its own in such cases. "I'd be worried about the OIG or Department of Justice (DOJ) maintaining that a quality of care issue is a False Claims Act issue," says attorney **Robert Markette Jr.**, in Indianapolis.

Markette does believe, however, that physicians bear the liability, "as they are the ones ordering [services, products, and medications, etc.]."

Proactive strategies: "The nursing facility's credentialing process or contract/agreement should require physicians to disclose any financial interest that could pose a conflict of interest [in their care of residents]," advises **Carla Saxton McSpadden, RPh, CGP,** with the American Society of Consultant Pharmacists. The facility could choose to make this inquiry, although there's no federal obligation for the physician to disclose that information to the facility, says attorney **Howard Sollins** in Baltimore, Md. But "the physician who has a relationship with a vendor ... needs to do a separate analysis under the federal antikickback law, potentially under the federal referral (i.e., 'Stark') law, and similar state fraud and abuse laws."

A potential problem: "The consultant pharmacist may recommend a dosage reduction" for an antipsychotic, "as required by F329," notes **Susan LaBelle, RN, MSN, RACCT,** a consultant with PointRight Inc in Lexington, Mass. "But the facility

still has to rely on the physician to agree to it."

Solution: The medical director might "be expected to notice and take action" if he sees a physician "prescribing in a clinically inappropriate manner," says Markette. Or "a nurse might raise concerns about use of a wound-care product or medication for a particular resident or residents, and get the medical director involved that way."