

## Hospice Care in The Nursing Home – Navigating The Regulatory Challenges

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## What You Will Learn

- OIG's reports and recommendations on hospice care in the nursing facility
- OIG Risk Areas
- Companion Rules
- Actions of The Prudent Hospice™
- Audits to consider in your compliance program

## Nursing Facility as Site of Death

- By 2020, it has been estimated that 40% of Americans will die in a nursing facility (Brock and Foley)

## Benefits of Hospice Care in the Nursing Home

- Provides high quality end-of-life care and offers benefits such as reduced hospitalizations and improved pain management.
- Provides positive effects on non-hospice residents, suggesting indirect benefits on nursing home clinical practices

*Journal of Pain and Symptom Management*  
September 2009

## The Numbers

- Total Medicare spending for hospice care for nursing facility residents grew by 69 percent from 2005 to 2009, increasing from \$2.55 billion to \$4.31 billion
- At the same time, the number of hospice beneficiaries in nursing facilities increased by 40 percent
- Total number of hospices providing care to Medicare beneficiaries also grew, with a continuing trend toward for-profit

## The Concerns

### Hospice in ALFs – 2012

Measure	Unskilled NF	Skilled NF	ALF	National
Beneficiaries Served	18%	9%	10%	100%
Utilization Days	19%	5%	17% KY=2%; AZ=33%	100%
Mean LOS	102 Days	55 Days	155 days	71 Days
Median LOS	35 Days	14 Days	73 days	25 Days
% Discharged Alive	18%	18%	25%	13%
% Days @ RHC	99.4%	97.2%	99.6%	97.5%

Medicare 2012 Claims Data  
Courtesy of Hospice Analytics, [www.hospiceanalytics.com](http://www.hospiceanalytics.com)

### Office of Inspector General (OIG)

- Long standing concern with hospice care in the nursing home
- Results of a variety of reports findings and other activities
  - Operation Restore Trust
  - OIG Compliance Guidance for Hospice
  - OIG Reports (and even a *Special Fraud Alert*)
  - MedPAC Reports

### The OIG's Been Constantly Busy

1. OIG Special Fraud Alert 2009
2. Compliance Guidance for Hospice 2009
3. OIG Report: Services Provided in NHs 2011
4. OIG Workplan 2011
5. OIG Report: Hospice that Focus on NH Residents 2011
6. OIG Workplan 2012
7. OIG Workplan 2013
8. RI GIP Claims and Payments Did Not Always Meet State and Federal Requirements 2013
9. Colorado Improperly Claimed Some Medicaid Costs for Hospice Services 2013

### OIG Special Fraud Alert: Fraud and Abuse in Nursing Home Arrangement with Hospices-March 1998

- Offering free goods or goods at below fair market value to induce a nursing home to refer patients
- Room & board payments in excess of what the facility would have received directly from Medicaid had the patient not been enrolled in hospice
- Paying amounts to the nursing home for additional services that Medicaid considers to be included in its room and board payment to the hospice
- Paying above fair market value for additional non-core services which Medicaid does not consider to be included in its room and board payment to the nursing home

### OIG Special Fraud Alert (cont.)

- Referring patients to a nursing home to induce the nursing home to refer its patients to the hospice
- Providing free (or below fair market value) care to nursing home patients, for whom the nursing home is receiving Medicare payment under the skilled nursing facility benefit, with the expectation that after the patient exhausts the skilled nursing facility benefit, the patient will receive hospice services from that hospice
- Providing hospice staff to the nursing home to perform duties that otherwise would be performed by the nursing home

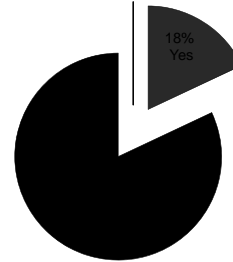
### OIG Compliance Guidance to Hospices 1999

- 28 Risk Areas
- 4 specifically addressing hospice care in the nursing home
  - Hospice incentives to actual or potential referral sources that may violate the anti-kickback statute or other similar Federal or State statute or regulation, including improper arrangements with nursing homes
  - Overlap in the services that a nursing home provides, which results in insufficient care provided by a hospice to a nursing home resident
  - Improper relinquishment of core services and professional management responsibilities to nursing homes, volunteers and privately-paid professionals
  - Providing hospice services in a nursing home before a written agreement has been finalized, if required

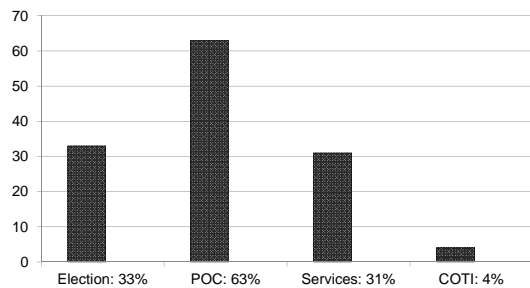
**OIG Report: Services Provided to Beneficiaries Residing in Nursing Facilities - September 2009**

- Reviewed 450 randomly selected claims of
    - Medicare beneficiaries residing in nursing homes receiving hospice services
    - Services provided in 2006
  - Eligibility was not assessed
  - The results
    - were horrible
    - are mentioned frequently and will guide many future activities
- OEI-02-06-00221

**From the OIG's Perspective, % of Claims That Met Payment Requirements**



**Problem Areas**



**Plan of Care Problem Areas**

63% did not meet POC requirements

- 1% did not establish POC
- 62% did not meet at least 1 requirement (not established by IDG; did not include necessary components such as detailed description of scope and frequency of services or did not include specific intervals for review - eliminated with 2008 CoPs)

31% did not provide the number of services as identified in the POC

- Provided services to the beneficiaries less frequently than identified in the POC
- In the most extreme cases, there was no documentation in the medical records of any visits for a particular service

**OIG Recommendations**

- Educate hospices about the coverage requirement and their importance in ensuring quality of care
- Provide tools and guidance to hospices to help them meet the coverage requirements
- Strengthen its monitoring practices regarding hospice claims

**The OIG Recommendations to CMS**

- Use targeted medical reviews and other oversight mechanisms to improve compliance especially with respect to establishing plans of care and providing services that are consistent with the plans of care
- Conduct more frequent certification surveys
- Instruct MACs to consider the issues in this report when they prioritize medical review strategies
- Share this report and relevant claim information with the RAs

### OIG Workplan 2011

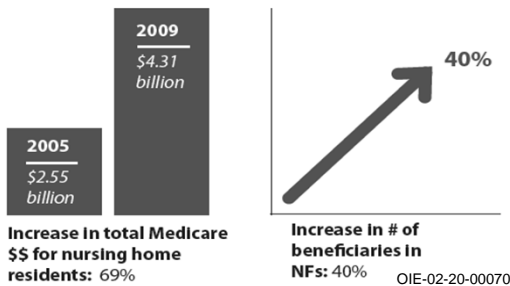
- Services Provided to Hospice Beneficiaries Residing in Nursing Facilities
- Hospice Utilization in Nursing Facilities-Report July 2011

### OIG Medicare Hospices That Focus on Nursing Residents - July 2011

Descriptive study  
Christened hospices with 2/3 or more of their beneficiaries in nursing facilities with a new name:  
*High-Percentage Hospices*

OIE-02-20-00070

### OIG Medicare Hospices That Focus on Nursing Residents July 2011



### OIG Medicare Hospices That Focus on Nursing Residents July 2011

	High Percentage Hospices	Hospices in General
Total Medicare payments per beneficiary	\$21,306	\$18,124
Median # days in hospice	52	31
% beneficiaries that received care for more than 6 months	28%	21%
% beneficiaries with ill-defined conditions, mental disorders and Alzheimer's	51%	32%

### OIG Recommendations

- CMS should target its monitoring efforts on hospices with a high percentage of beneficiaries in NFs and should closely examine whether these hospices are meeting Medicare requirements
- CMS should modify the hospice payment system for hospice care in NFs because the current payment structure provides incentives for hospices to seek out beneficiaries in NFs who often receive longer but less complex care
- CMS should reduce Medicare payments for hospice care provided in NFs, seeking statutory authority, if necessary

### OIG Workplan 2012

- Hospice
  - Hospice Marketing Practices and Financial Relationships with Nursing Facilities
  - Medicare Hospice General Inpatient Care
- Medicaid-Hospice Service Compliance with Reimbursement Requirements

Rhode Island Hospice General Inpatient Claims  
and Payments Did Not Always Meet State  
and Federal Requirements 2012

- Whether Medicaid payments for hospice services complied with Federal reimbursement guidelines
- 56% of the reviewed claims did not meet the payment requirements
- 95% of denied claims were for GIP provided in the facility in which the individual resided

OIG A-01-12-0002

### OIG Recommendations

- State agency should strengthen internal controls, such as issuing guidance to hospices that better define the circumstances for general inpatient care and implementing computer edits to the claims processing system to ensure that payments are reduced by the amount of beneficiaries' financial contributions and duplicate payments for drugs are not made
- State Agency should consider performing additional medical reviews of inpatient hospice services performed in a nursing home

OIG Medicare Could Be Paying Twice for  
Prescription Drugs for Beneficiaries in Hospice  
June 2012

- The OIG determined that Medicare Part D paid for drugs that should have been paid by hospices  
(A-06-10-00059)
- Although not focusing on hospice in the nursing home, vulnerability lies there also

### OIG Recommendations

- Educate sponsors, hospices, and pharmacies that it is inappropriate for Medicare Part D to pay for drugs related to hospice beneficiaries' terminal illnesses
- Perform oversight to ensure that Part D is not paying for drugs that Medicare has already covered under the per diem payments made to hospice organizations

### OIG Workplan 2013

- Hospices
  - Marketing Practices and Financial Relationships with Nursing Facilities
  - General Inpatient Care
- Medicaid-Hospice Service Compliance with Reimbursement Requirements

### Companion Rules

- December 2008 Hospice CoPs 418.112 Hospices that provide hospice care to residents of a SNF/NF or ICF/MR
- August 2013 Nursing Facility 483.75 Administration Hospice Services
- 4 areas for special consideration
  - LTCF may arrange for hospice or assist resident to transfer
  - Ensure hospice services meet professional standards and timeliness of services
  - LTCF notifies hospice need to transfer from facility for any condition
  - LTCF staff provides orientation to hospice staff

## THE ACTIONS OF THE PRUDENT HOSPICE™

### The Perennial Challenge

- At Any Moment in Time
  - Are you doing what you are supposed to be doing?
  - Does staff have regulatory competence?
  - Is monitoring and auditing in place for key areas?
- Going Forward
  - Do you have monitoring and auditing in place to catch & identify potential issues and changes?
  - Do you have the knowledge to interpret the changes?
  - Are you implementing the necessary process changes?
  - Are you providing the right education to the right people at the right time?

### The Big Picture

- All beneficiaries regardless of location of care must meet all payment requirements
  - Eligibility
  - Level of care
  - Election
  - Certification
  - Plan of care
- OIG risk areas must be addressed

### Focus on the Basics

- Does your election statement contain all elements required by 418.24?
- Do your certification and recertification forms and process meet all the regulatory requirements (418.22)?
  - Statement
  - Narrative
  - Face to face when applicable

### Focus on the Basics

- Review your plan of care process (418.56)
- Audit your delivery and coordination of care
  - Are your patients getting what the plan of care says they will?
  - Does the IDG determine frequencies based on patient needs?
  - How would does your quality rate based on what is documented?
  - Is there evidence of coordination of care?
  - Does the NF ever send a resident to the hospital without contacting the hospice?

### Focus on the Basics

- Are there audits of NF clinical records to assure that the required hospice documentation is in place?
- Does your documentation support the prognosis of 6 months or less?

### Hospice and Nursing Home Arrangements

- Audit your nursing home contracts to ensure they include all elements required in 418.112(c) and that you are adhering to them.
- What is your process to ensure you have a written contract in place before you accept a patient in that nursing home?
  - Does your admissions department have a list of facilities with contracts?

### Hospice and Nursing Home Arrangements

- Is there anything in the payment arrangements that could be construed to be an inducement for referrals?
- Does the facility reap any monetary benefits from a hospice admission?
- Is your hospice providing any services to the facility at below fair market value?
- Is your hospice buying any services from the facility at above fair market value?

### Hospice and Nursing Home Arrangements

- Is the Medicaid room and board for no more than 100% of the Medicaid room and board rate?
  - Do you have a process to know the current rate for each facility?
  - How does the Medicaid claims system treat the amount on your claim?
  - How do you determine the monthly patient liability amount?
- Are you paying an additional per diem, over the room & board, for additional services?
  - For what and why?
  - Is it for items already covered in the NF room and board per diem?

### Nursing Home Surveys

- Do you have a protocol in place when the nursing facility is having a survey?
  - Who they notify
  - What you will do
  - 24x7
- How does the NF determine your performance with regard to meeting professional standards and principles and timeliness of services?
- How well has the communication been in regards to the NF notifying you of any need to transfer the patient?

### General Inpatient Level of Care in the Nursing Facility

- How were the GIP rates determined? Based on fair market value?
- What and who determines when a resident's level of care (LOC) will be changed?
- What are you doing to justify the additional revenue – has the Plan of Care changed? Is your staff increasing visits?
- What type of documentation does the facility provide when the patient is at GIP LOC?
- How do you know they have a RN available 24x7 that provides care?
- How does the facility's care to the resident change? What are they doing to justify the additional revenue?
- Is auditing of the documentation to support the GIP LOC part of the compliance program audit plan?

### Medications and Supplies

- Do you have a consistent process which is supported by policy on determining what medications and supplies are related or unrelated? Is it consistent from setting to setting?
- How is this communicated to the NF?
- Do you ever audit your drug claims to see that you are paying for what is related and it is supported in the clinical record?
- Do you look at your pharmacy and supply costs per patient day and compare between your NF patients and your home patients? If they are different, why?

### Continuous Home Care

- What and who determines when a resident's level of care will be changed to Continuous Home Care (CHC)?
- Does the utilization pattern suggest that it is provided to every patient, regardless of symptom needs, or can you clearly demonstrate that it is resident specific?
- How do your CHC hours per patient day for NF residents compare with home care patients? If there is a marked variation in utilization, why?
- Is auditing the documentation to support the CHC LOC part of the compliance plan?

### Sales and Marketing Practices

- Take a look at your marketing materials for any areas of concern
- How do you know what your staff is promising the facility?
  - Sales staff
  - Caregiving staff
  - Admissions staff
- Do all your staff know what to say when the nursing home says?
  - Well the other hospice is promising or does ....
  - I'll give you a referral if you give me a referral
  - You must place someone here 40 hours a week

### Hospice Aide Services

- Do you provide hospice aide (HA) services based on the needs of the resident?
- How do the frequencies of HA visits for NF residents compare to your home patients? If there is a difference, do your clinical records justify it?
- Do you look at visits per patient day per facility? If there is a disparity, can you justify it?
- Do you staff a NF with a HA 40 hours per week regardless of the needs of the residents?
- Do your HAs provide care to non-hospice residents?

### Referrals

- Do you track referrals per facility and look for trends?
- When there is an uptick, can you justify why?

### Services to Residents on Medicare A SNF Days

- Does your hospice admit residents non-funded while they are under their skilled days?
  - Stop immediately

### Summary

- It's the new reality
- Understand the issues
- Implement and improve your compliance program



## Resources

- **OIG Compliance Guidance for Hospices**  
<http://oig.hhs.gov/authorities/docs/hospicx.pdf>
- **Special Fraud Alert 1998**  
<http://oig.hhs.gov/fraud/docs/alertsandbulletins/hospice.pdf>
- **OIG Report Medicare Hospice Care for Beneficiaries in Nursing Facilities: Compliance with Medicare Coverage Requirements** <http://oig.hhs.gov/oei/reports/oei-02-06-00221.pdf>
- **OIG Report Medicare Hospices that Focus on Nursing Facility Hospices** <http://oig.hhs.gov/oei/reports/oei-02-10-00070.pdf>
- [OIG.gov](http://OIG.gov)

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