

The OIG and Hospice in Nursing Facilities: Past, Present and Future

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Objectives

- ◆ Name three risk areas related to hospice in nursing facilities identified by the OIG.
- ◆ Describe the Medicare coverage requirements that were not met in 82% of the claims reviewed in the OIG's 2009 study.
- ◆ Define a "high-percentage hospice"
- ◆ List two characteristics of a high-percentage hospice

Agenda

- A brief overview of a long history
- More recent activities
- Where to from here



A Brief Overview of a Long History



History of OIG Reports 1995



Medicare Advisory Bulletin: Questionable Practices Affecting the Hospice Benefit

- ◆ Part of Operation Restore Trust
- ◆ The first time HHSOIG expressed a public concern regarding hospice in nursing homes
- ◆ Contained only one sentence on “Questionable Activities” related to NH residents: “*Nursing home residents being induced to elect hospice but not receiving the additional benefits of hospice care*”

History of OIG Reports September 1997



Hospice Patients in Nursing Homes (OEI)

- ◆ *Key Finding: Lower frequency of services, the overlap of services and the questionable enrollment in hospice by nursing home patients suggest that current payment levels for hospice care in nursing homes may be excessive*
- ◆ *Recommendation: Modify Medicare or Medicaid payments for hospice patients living in nursing homes*
- ◆ *(Sound familiar?)*

History of OIG Reports November 1997



Hospice and Nursing Home Contractual Relationships (OEI)

- ◆ Findings: *Almost all of 22 hospices reviewed pay nursing homes the same or more than what Medicaid would have paid for nursing home care if the patient had not elected hospice (6 paid 105% of Medicaid daily rate or more)*

History of OIG Reports November 1997 (cont'd)



Hospice and Nursing Home Contractual Relationships

Findings(cont'd):

- ◆ *Both the hospice and the nursing home can benefit financially by enrolling patients in hospice*
- ◆ *Some hospice contracts with nursing homes contain provisions that raise questions about inappropriate patient referrals*

History of OIG Reports

March 1998



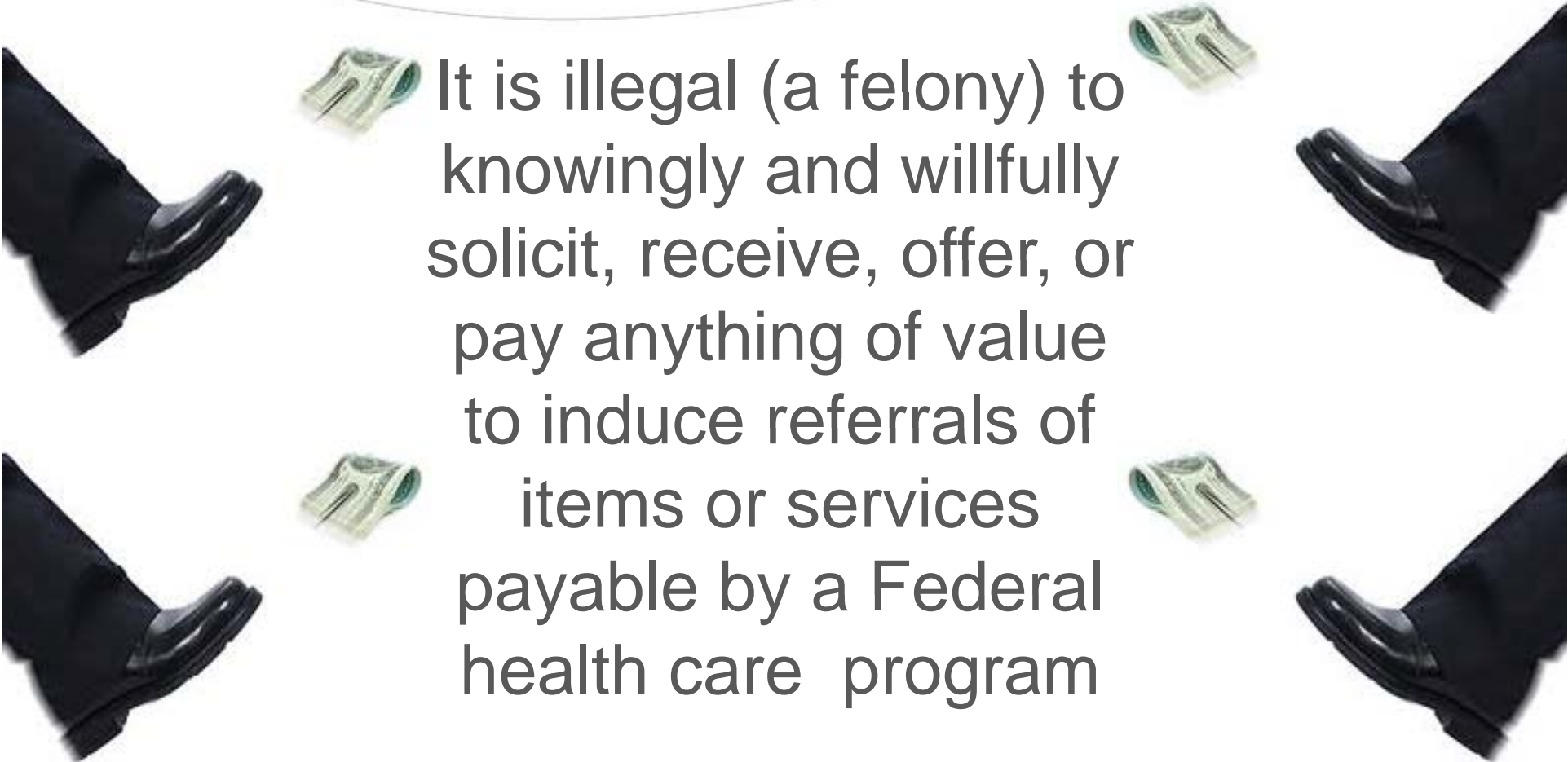
Special Fraud Alert: Fraud and Abuse in Nursing Home Arrangements with Hospice

- Focus: Paying or receiving kickbacks in order to induce Medicare or Medicaid referrals

OIG Special Fraud Alert (Cont'd)

- ◆ “Hospice patients residing in nursing homes may be particularly desirable from a hospice’s financial standpoint.”
 - ◆ First, a nursing home’s population represents a sizeable pool of potential hospice patients. Second, nursing home hospice patients may generate higher gross revenues per patient than patients residing in their own homes because nursing home residents receiving hospice care have, on average, longer lengths of stay than hospice patients in their homes. Also, there may be some overlap in the services that the nursing homes and hospices provide, thereby providing one or the other the opportunity to reduce services and costs.

The Anti-Kickback Statute



It is illegal (a felony) to knowingly and willfully solicit, receive, offer, or pay anything of value to induce referrals of items or services payable by a Federal health care program

Practices that might violate the anti-kickback statute

- ◆ A hospice offering free goods or goods at below-fair-market value to induce a nursing facility to refer patients to the hospice
- ◆ A hospice paying amounts to the nursing facility for additional services that Medicaid considers to be included in its room and board payment to the hospice (so already paid for)

Practices that might violate the anti-kickback statute (cont'd)

- ◆ A hospice paying room and board payments to the nursing facility in excess of what the nursing facility would have received directly from Medicaid had the patient not been enrolled in hospice
- ◆ Any additional payment must represent the fair-market value of additional services actually provided to that patient that are not included in the Medicaid daily rate

Practices that might violate the anti-kickback statute (cont'd)

- ◆ A hospice providing free (or below fair-market value) care to nursing facility patients, for whom the nursing facility is receiving Medicare payment under the SNF benefit, with the expectation that after the patient exhausts the SNF benefit, the patient will receive hospice services from that hospice
- ◆ A hospice providing staff at its expense to the nursing facility

Compliance Program Guidance for Hospices

1999

4 of the 28 OIG-identified hospice risk areas explicitly related to hospice in the nursing home



Risk Areas

- ◆ Hospice incentives to actual or potential referral sources (e.g., physicians, nursing homes, hospitals, patients, etc.) that may violate the anti-kickback statute, 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

Medicare Hospice Care: A Comparison of Beneficiaries in Nursing Facilities and Beneficiaries in Other Settings

2007

Findings:

- ◆ 28% of hospice patients resided in nursing facilities in 2005
- ◆ Hospice patients in nursing homes more than twice as likely to have “ill-defined” diagnoses (i.e. adult failure to thrive, debility and senility)
- ◆ Hospice patients in nursing homes have longer lengths of stay than patients in other settings



now

more recent
reports



Medicare Hospice
Care for
Beneficiaries in
Nursing Facilities:
Compliance with
Medicare Coverage
Requirements

September 2009

now

- 82% of hospice claims for beneficiaries in nursing facilities did not meet at least 1 Medicare coverage requirement

2009 Report (cont'd)

- ◆ 33% of claims did not meet election requirements
- ◆ 63% of claims did not meet POC requirements
- ◆ 31% of claims, hospices provided fewer services than outlined in beneficiaries' POCs
- ◆ 4% of claims did not meet certification of terminal illness requirements

2009 Report (cont'd)

- Medicare paid approximately \$1.8 billion for these claims
- Claims from not-for-profit hospices were less likely to meet Medicare coverage requirements than those from for-profit hospices



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Work Plan



FISCAL YEAR
2011



now

2011 Work Plan

- ◆ Hospice utilization in nursing facilities
 - ◆ Follow-up to OIG report that 82% of hospice claims for nursing facility residents did not meet eligibility requirements
 - ◆ Will look at long length of stay patients, business relationships and marketing practices of hospices with long length of stay patients



now

2011 Work Plan (cont'd)

- ◆ Services provided to hospice nursing facility residents – will look at:
 - ◆ Services by hospice aides
 - ◆ POCs and coordination of care
 - ◆ Appropriateness of GIP claims

now

Medicare Hospices That Focus on Nursing Facility Residents

July 2011 Report

- Describes the growth in hospice care from 2005 to 2009
- Focuses on hospices that served a high percentage of nursing facility residents in 2009



now

Definition of “High- Percentage Hospice”

- Two-thirds or more of the hospice’s census resides in a nursing facility



Medicare Hospices That Focus on Nursing Facility Residents (cont'd)

FINDINGS:

- Medicare spending on hospice care for nursing facility residents has grown nearly 70% since 2005
- 263 hospices had more than two-thirds of their census in nursing facilities in 2009 (“high percentage” hospices)
- Most high-percentage hospices are for-profit

Medicare Hospices That Focus on Nursing Facility Residents (cont'd)

FINDINGS:

- ◆ “High-percentage” hospices received more Medicare payments per beneficiary and served beneficiaries who spent more time in care
- ◆ Medicare paid an average of \$3,182 more per beneficiary for beneficiaries served by “high-percentage” hospices than it paid per beneficiary for those served by hospices overall

Medicare Hospices That Focus on Nursing Facility Residents (cont'd)

FINDINGS:

- “High-percentage” hospices typically enrolled beneficiaries whose diagnoses required less complex care and who already lived in nursing facilities

Medicare Hospices That Focus on Nursing Facility Residents (cont'd)

2 RECOMMENDATIONS (CMS agreed)

- ◆ Increase monitoring efforts on hospices with a high percentage of beneficiaries in nursing facilities and should closely examine if they are meeting Medicare requirements
- ◆ Modify the payment system for hospice care in nursing facilities
- ◆ Note, MedPAC recommends the same



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Work Plan

FISCAL YEAR
2012

Areas of focus

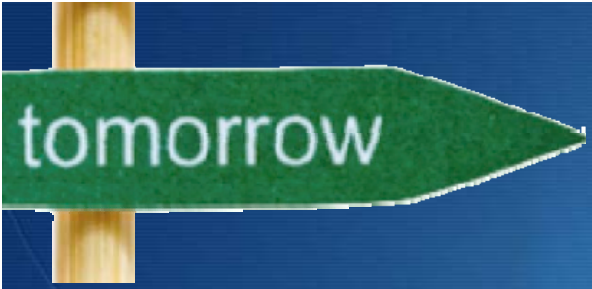
- Marketing practices and financial relationships with nursing facilities
 - Audit for inappropriate enrollment, compensation and aggressive marketing
- Focus review on high percentage hospices
- OIG/DOJ investigations focusing on these risk areas too



tomorrow

Where to from
here?





tomorrow

What to Expect

- The OIG will audit:
 - Marketing practices of “high-percentage” hospices
 - Business relationships of “high-percentage” hospices with nursing homes

What to Expect (audits cont'd)

- ◆ Eligibility of patients residing in NH
- ◆ Pharmacies billing Medicare Part D for medications related to the terminal illness (and possibly takebacks from hospices)



tomorrow

What to Expect (cont'd)

- CMS will share OIG's recommendation for increased monitoring of "high-percentage" hospices with RACs and MACs and encourage them to target auditing efforts
- CMS agrees that current payment structure incentivizes hospices to seek out nursing home patients
 - Payment reform is mandated by Affordable Care Act
 - Change in reimbursement for hospice in nursing facilities is likely (See MedPAC reports)

What to do

- ◆ Recognize the OIG has expressed concerns regarding hospice care in nursing homes since 1995 and the concerns have increased and are supported by investigations
- ◆ Make certain that written (and unwritten) agreements with nursing homes are in compliance with laws/regulations
- ◆ Make certain all practices with regard to referrals and nursing home partnerships are ethical and not in violation of the anti-kickback statute

What to do

- ◆ Review all marketing materials to make sure eligibility requirements are clearly stated
- ◆ Ensure patients on GIP in SNFs meet requirements for that level of care (24 hour RN Availability)
- ◆ Ensure all medications related to the terminal diagnosis are billed only to the hospice – make sure systems are in place to audit this

What to do (cont'd)



- ◆ Make sure that every nursing home hospice patient is eligible at the time of admission and throughout the course of care
- ◆ Do whatever possible to try to protect access to hospice care for nursing home residents by ensuring compliant and ethical practices

QUESTIONS?

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