

## ABUSE OF HOSPICE CARE

The Medical Association of Georgia adopted a resolution expressing concern over instances in which hospice care providers have inappropriately marketed themselves to nursing home residents, that nursing homes have a financial incentive to encourage such marketing, that such practices increase the cost of health care, and that MAG members should receive contact information to report the inappropriate utilization of hospice services.

In order to receive hospice benefits, a Medicare recipient must be entitled to Medicare Part A and certified as terminally ill, meaning a life expectancy of six months or less.<sup>1</sup> The certification of terminal illness must come from the hospice's medical staff and the individual's attending physician if they have one.<sup>2</sup>

Hospice providers have a financial incentive to draw patients from nursing homes because such patients typically have longer lengths of stay. Additionally, hospice providers receive a fixed daily payment regardless of the amount of services provided. Therefore, overlap in the services provided by the nursing homes and hospices may allow either provider to reduce the services they provide, yet still receive the same compensation. These financial incentives create the potential for kickbacks between the hospice and nursing home providers for referrals. Suspected kickbacks include:

- Hospice providers offering goods free or below fair market value to nursing home residents in exchange for referrals;
- Hospice providing staff to the nursing home and performing duties otherwise performed by the nursing home staff;
- Hospice paying "room and board" to nursing homes in excess of what the nursing home would receive directly from Medicare if the resident was not enrolled in hospice;
- Hospice referring patients to a nursing home in exchange for referrals from the nursing home.

Such practices may violate the federal anti-kickback statute and be criminally punishable.<sup>3</sup>

Another form of hospice abuse relates to beneficiary eligibility. In order for a hospice provider to be reimbursed by Medicare for hospice services, they must obtain certification of terminal illness from the medical director or physician member of the hospice's interdisciplinary group and from the patient's attending physician, if the patient has an attending physician.<sup>4</sup>

"Terminally ill" is defined as "an illness for which therapeutic intervention directed toward cure of the disease is no longer appropriate, and the patient's medical prognosis is one in which there is a life expectancy of six months or less."<sup>5</sup> The Office of Inspector General (OIG) has revealed

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<sup>1</sup> *Fraud and Abuse in Nursing Home Arrangements with Hospices*. Office of Inspector General. Special Fraud Alert. March, 1998.

<sup>2</sup> *Publication of the Medicare Advisory Bulletin on Hospice Benefits*. Federal Register, Vol. 60, No. 212. Nov. 2, 1995.

<sup>3</sup> *Supra*, n1.

<sup>4</sup> 42 CFR 418.22(c)(i), (ii).

<sup>5</sup> *Hospice Licensure Regulations*, Z 4.0. State of Georgia, Office of Regulatory Services. See also, *Supra*, n1.

instances where physicians' certification of terminal illness were medically questionable. When a hospice provider knowingly and willfully submits a claim to Medicare for an ineligible individual, they may be liable for submitting a false claim.<sup>6</sup> A physician that assists a hospice provider in submitting a false claim also faces potential liability.

As part of Operation Restore Trust, the OIG also discovered that hospice providers engage in marketing strategies that offer incomplete information about Medicare's hospice program in order to induce patients to elect hospice and waive treatment options that would otherwise be covered by Medicare, and some hospice providers encourage beneficiaries to temporarily revoke their election of hospice when costly services are needed.<sup>7</sup>

If you would like to report suspicious activity on the part of hospice or nursing home providers, you may contact the OIG's Atlanta Regional Office at (404) 562-7603, the HHS Tipline at (800) HHS-Tips, e-mail OIG at [HHSTips@oig.hhs.gov](mailto:HHSTips@oig.hhs.gov), or write to the Department of Health and Human Services, Office of Inspector General, P.O. Box 23489, L'Enfant Plaza Station, Washington D.C. 20026-3489.

Additionally, state regulations applicable to hospice providers may be obtained from the Office of Regulatory Service's website. Federal regulations applicable to hospice providers may be obtained from website of the Office of the Federal Register (42 CFR 418.1 through 42 CFR 405) at <http://www.gpoaccess.gov/nara/>.

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<sup>6</sup> *Supra*, n2.

<sup>7</sup> *Supra*, n2.