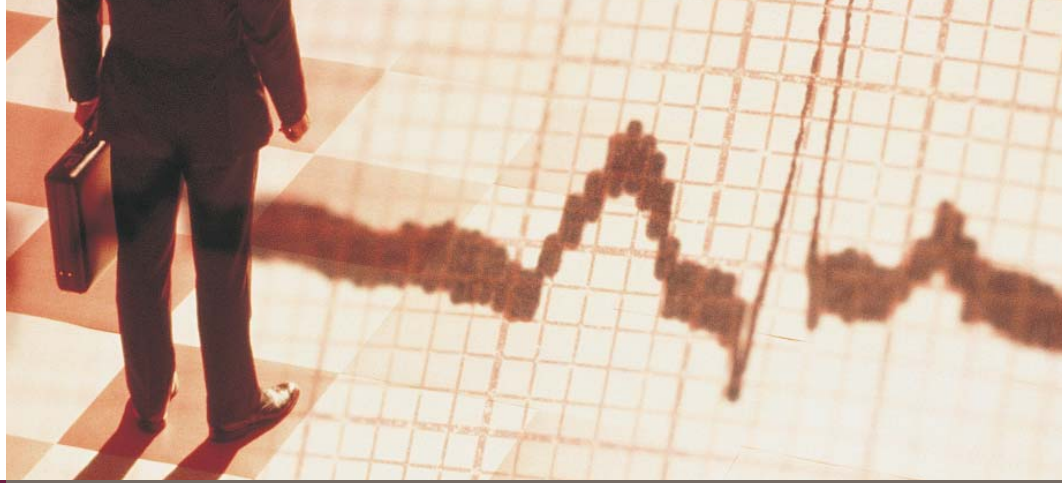


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Health Care Bulletin

HOSPICE ACTIVITIES IN THE OIG'S 2013 WORK PLAN

By: Robert Markette and Ari J. Markenson

On October 2, 2012, The U.S. Department of Health and Human Services Office of the Inspector General ("OIG") released its Work Plan for 2013. The OIG releases its work plan for each year in advance of the coming year. The work plan provides stakeholders in the health care industry with a broad overview of the OIG's activities in the coming year as they relate to its enforcement priorities and issues it will review and evaluate during that fiscal year. This client alert is one in a series of alerts that will outline the OIG's activities, as discussed in the 2013 Work Plan, for a specific industry sector - Hospice.

The OIG's activities relating to Hospice for 2013 are focused on two issues that generally involved hospice—nursing home relationships. The following is a summary of each of the issues and what the OIG is focusing on.

Hospices—Marketing Practices and Financial Relationships with Nursing Facilities

The OIG's Office of Evaluation and Inspections ("OEI") is going to review hospices' marketing materials and practices and their financial relationships with nursing facilities. Medicare covers hospice services for eligible beneficiaries under Medicare Part A. (Social Security Act, § 1812(a).) In a recent report, OIG found that 82 percent of hospice claims for beneficiaries in nursing facilities did not meet Medicare coverage requirements. MedPAC, an independent congressional agency that advises Congress on issues affecting Medicare, has noted that hospices and nursing facilities may be involved in inappropriate enrollment and compensation. MedPAC has also highlighted instances in which hospices aggressively marketed services to nursing facility residents. The OEI review will focus on hospices that have a high percentage of their beneficiaries in nursing facilities.

This is a repeat item from last year's work plan and a result of OIG's long standing suspicion of the relationship between hospices and nursing facilities. This is also part of OIG's ongoing follow up to the report it issued in the

summer of 2011 regarding the relationships between hospices and nursing homes. In that report, OIG raised concerns about certain for profit hospice providers' practices regarding admitting marginal hospice patients that were residing in nursing facilities and other suspect practices. OIG continues to be concerned that hospices are admitting residents who do not meet the benefit coverage requirements due to either pressure from the nursing facility, the increased potential for profit to the hospice, or other inappropriate compensation or arrangements between the providers.

Hospice providers who provide hospice services in nursing facilities should assess their patient census to ensure they are admitting patients who meet the hospice benefit criteria. Based upon last summer's OIG report, this should include an assessment of the diagnoses of patients in the facility. OIG has expressed a concern about certain "non-specific" terminal illnesses. This include failure to thrive, dementia, etc.

Hospice providers should also assess their marketing materials. This is not the first time OIG has raised a concern about inappropriate marketing materials leading to inappropriate admissions. Providers should review marketing materials to ensure that the materials adequately describe the benefit, accurately describe eligibility criteria, and make it clear that electing hospice means foregoing curative treatment. OIG is concerned that some beneficiaries have elected hospice not realizing that the benefit requires them to have a life expectancy of six months or less, if the disease runs its "normal course" and that this must be certified by a physician.

Hospices—General Inpatient Care

The OEI is also going to review the use of hospice general inpatient care in 2013 in order to assess the appropriateness of hospices' general inpatient care claims. Federal regulations address Medicare CoPs for hospice at 42 CFR Part 418. OEI is going to review

hospice medical records to address concerns that this level of hospice care is being misused.

OIG is concerned that patients are being placed on general inpatient care for inappropriate reasons, including as a means to provide additional compensation to facilities. When a hospice admits a patient to general inpatient care, the nursing facility is generally reimbursed under a contract between the hospice and the nursing facility at a higher rate. Because general inpatient care has specific eligibility criteria, OIG will be reviewing general inpatient care admissions in light of the criteria. Hospice providers should review and monitor current and prior years' general inpatient admissions for compliance with Medicare coverage requirements.

Benesch's Health Care Practice Group

Additional Information

For more information on the OIG's Work Plan for 2013, its priorities, Medicare and Medicaid program integrity initiatives in general or assistance with responding to an OIG or OEI inquiry relating to any issue, please contact **Ari Markenson, Robert Markette** or any member of Benesch's Health Care Department:

Cleveland

Harry Brown (216) 363-4606 or hbrown@beneschlaw.com

Greg Binford (216) 363-4617 or gbinford@beneschlaw.com

W. Clifford Mull (216) 363-4198 or cmull@beneschlaw.com

Dan O'Brien (216) 363-4691 or dobrien@beneschlaw.com

Alan Schabes (216) 363-4589 or aschabes@beneschlaw.com

Columbus

Frank Carsonie, Chair (614) 223-9361 or fcarsonie@beneschlaw.com

Janet Feldkamp (614) 223-9328 or jfeldkamp@beneschlaw.com

Meredith Rosenbeck (614) 223-5353 or mrosenbeck@beneschlaw.com

Marty Sweterlitsch (614) 223-9367 or msweterlitsch@beneschlaw.com

Indianapolis

Robert W. Markette, Jr. (317) 685-6128 or rmarkette@beneschlaw.com

White Plains

Ari J. Markenson (914) 682-6822 or amarkenson@beneschlaw.com

www.beneschlaw.com

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