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Health Care Bulletin

OIG WORK PLAN 2012: HOSPICE

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As we move through another October, it is time again for the Department of Health and Human Services Office of Inspector General ("OIG") to issue its annual Work Plan. The Work Plan notifies Medicare and Medicaid providers of areas that the OIG feels warrant special concern in the coming year. Providers should take heed of these warnings and assess their own performance in these areas, before the OIG has the chance to do so. The good news for hospice providers this year is that the number of issues related to hospice in the Work Plan are relatively limited. Although there are only a few issues listed, at least one of these issues has the potential to be significant.

1. **Acute-Care Hospital Transfers to Inpatient Hospice Care**

   The OIG proposes to review Medicare claims for inpatient stays during which the beneficiary was transferred to hospice care. The OIG will examine the relationship, either financial or ownership, between the hospital and the hospice. The OIG will also examine how Medicare treats reimbursement for similar transfers from the acute care setting to other settings. This item is related to another item listed in the Work Plan. It appears the OIG has some concerns about how these transfers, and payments, are handled, especially in cases where the hospital and hospice are "related." Hospices that have arrangements with hospitals to provide in-patient care and that admit patients to hospice directly from the hospital should take note of this proposal and assess those relationships.

2. **Hospice Marketing Practices and Financial Relationships with Skilled Nursing Facilities**

   In light of other guidance from CMS and the OIG in recent months, this may be the most important piece of the Work Plan for hospice providers. The OIG intends to review hospices' marketing materials and practices and their financial relationships with skilled nursing facilities (SNF). The OIG's concerns in this area are fueled by the recent report that found 82% of hospice claims for beneficiaries in SNFs did not meet Medicare coverage requirements. The OIG also notes that, according to MedPAC, "hospices and nursing facilities may be involved in inappropriate enrollment and compensation relationships. The OIG is also concerned about reported instances where hospices "aggressively" marketed their services to nursing facility residents. This review will focus on hospices that have a high percentage of their patients in nursing facilities.

   After the OIG's report this summer regarding hospices with high percentages of patients in SNFs, it is not surprising that the OIG would place this item in its Work Plan. Hospice providers need to be diligently examining their relationships with SNFs. This should include review of contracts and compensation; an assessment of services and quality of care to patients residing in the nursing home; and a review of the hospices marketing materials. Marketing materials should make the eligibility requirements for the hospice benefit clear. One of the OIG's biggest concerns is the admission of patients to the hospice benefit who have "nebulous conditions" and/or who, while terminal, may have longer than six months left to live. The OIG has been very focused on these issues for awhile now. Providers must be proactive in addressing these concerns.

3. **Medicare Hospice General Inpatient Care**

   The OIG plans to review the use of hospice general inpatient care from 2005 to 2010. The OIG intends to assess the appropriateness of hospices' general inpatient care claims and hospice beneficiaries drug claims billed to Part D. The OIG will be reviewing hospice medical records to address concerns that this level of hospice care is being misused. the OIG also intends to assess the extent to which drugs covered under the hospice benefit are being

inappropriately billed to Part D. This is another area that the OIG has mentioned in the past. Last year's Work Plan mentioned the inappropriate billing of drugs covered under the hospice benefit to Part D. This item may lead to individual actions against providers, but may also lead to the OIG recommending changes to the benefit in general.

4. Duplicate Drug Claims for Hospice Beneficiaries

This item relates to a previous item in this year's Work Plan and was also in last year's Work Plan - always a good indicator providers should take notice. Once again, the OIG intends to review the appropriateness of drug claims for individuals who are receiving hospice benefits under Part A and drug coverage under Part D. The OIG will review these claims to determine whether payments for such beneficiaries under Part D are correct, supported, and not duplicated in hospice per diem amounts. The OIG will determine controls to put into place to prevent future duplication of claims. Hospice providers should be reviewing claims to ensure they are not billing for drugs covered under the per diem to Part D. This may include reviewing records to determine whether the hospice is being invoiced by pharmacies for drugs related to the care of terminally ill patients who qualify under Part D. If you are not being invoiced, the pharmacy may be billing Part D.

5. Medicaid: Hospice Services: Compliance with Reimbursement Requirements

The OIG will review Medicaid payments for hospice services to assess compliance with federal reimbursement requirements. This review is being triggered by the growth in Medicaid hospice spending, which exceeded $816 million in FY2010. Providers should be auditing their claims to assess compliance with Medicaid billing requirements. This type of audit should already be a routine part of your compliance efforts - your annual auditing and monitoring should almost certainly require some level of claims auditing and review every year. That is one of your highest risk areas.

Conclusion

Overall, the OIG does not list as many hospice issues as it has listed home health and other provider issues. The issues that the OIG has listed as areas of focus in FY2012 include a few that have been either part of previous Work Plans, duplicate drug claims, or subject to their own special fraud alerts, Hospice and SNF relationships. This sort of repeated mention should cause providers to take notice of these issues and assess their own compliance in these areas. It is always better to identify your own problems than it is to let the OIG or CMS identify them for you. Providers should begin considering how these identified risk areas fit into their compliance plans for 2012.

Additional Information

If you have any questions regarding the issues presented in this article or if the Benesch Health Care Practice Group could otherwise be of assistance, please contact:

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As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.

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