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## “Lunch & Learn” Seminar — Independent-Study Program

Provided by Hospiscript Services, LLC and the  
Midwest Center for Home, Hospice & Palliative Care Education  
Hospice Nurses Working with Nursing Home and Managed Care (05/2011)  
Expires 05-31-2013

Hospiscript Services and the Midwest Center for Home, Hospice & Palliative Care Education are pleased to announce that our very popular “Lunch & Learn” seminars are now available online as self study programs offering continuing educational (CE) credit. These learning modules are accessible to Hospiscript clients via [www.hospiscript.com](http://www.hospiscript.com) and to Midwest Care Alliance members via [www.midwestcarealliance.org](http://www.midwestcarealliance.org).

This recorded series has been available for quite some time, but did not offer the option of receiving continuing educational credit. We are delighted that in addition to offering excellent education in a format to be accessed at your convenience, we are now offering you and your staff members another source to assist you in meeting your CE requirements.

Each seminar (*beginning with 2009*) is available as an independent-study program and includes the documents needed to apply for CE credit within this handout. After listening to the seminar online, simply complete the CE Request Form which includes both an evaluation and post test. Once completed, submit it along with the processing fee of \$10 to request credit. In order to qualify for credit, a minimum score of 70% must be achieved on the post test.

Please be advised that credit for CE purposes may only be awarded to each person once per seminar. It is the responsibility of the student to keep his or her personal records to avoid repeating a module. Periodical audit reviews will also be conducted to determine any violations.

We hope you will find this convenient new format helpful and effective!

### Disclosure Information:

The planning committee has declared no conflict of interest. To resolve any conflict, the presenter has agreed to present information fairly and without bias, according to policy.

Disclosure  Nothing to Disclose

Cherry Meier, RN, MSN, LNHA

No commercial support was received for this educational activity.

## Online Independent-Study Program • CE Request Form

### Hospice Nurses Working with Nursing Home and Managed Care (05/2011)

Requesting CE Credit For:  Nursing CE

*\*Upon submittal of the proper forms, this program offers 1 CE credit for nursing valid nationally (not valid for Iowa licenses).*

**Criteria for Successful Completion:** Listening to the audio seminar, submitting completed CE Request Form with processing fee, and achieving a minimum score of 70% on the post test.

**Expiration:** This program expires on May 31, 2013.

#### Part I - Participant Information *(please print legibly)*

Date Completed:	
Name:	
Employer:	
Occupation/Credentials: <i>(RN, LPN, SW/C)</i>	
Complete Mailing Address: <i>(Street, City, State, Zip)</i>	
Phone:	
Email Certificate To:	

#### Part II - Evaluation

Were the following objectives met?

1. Identify potential compliance issues in arrangements between hospice and nursing home providers.  YES  NO
2. Describe alternative behaviors that demonstrate compliance.  YES  NO

This speaker demonstrated effective teaching on a scale of 5 (excellent) to 1 (poor):

Cherry Meier, RN, MSN, LNHA:  5  4  3  2  1

Comments:	
Questions for Speaker:	

#### Part III - Post Test

1. In completing the MDS 3.0, Nursing Home staff must be informed when a patient:
  - a.  is admitted to the Nursing Home receiving Hospice
  - b.  is discharged from the Nursing Home receiving Hospice
  - c.  elects Hospice while residing in the Nursing Home
  - d.  All of the above
2. A Nursing Home resident electing Hospice should receive the same level of service from nursing home staff.  
 TRUE  FALSE
3. A Nursing Home is required to have contracts with Hospice providers.  TRUE  FALSE
4. The following activities are suspected kickbacks, except:
  - a.  a hospice offering free goods to induce a nursing home to refer patients
  - b.  a hospice paying 100% of the "room and board" payment
  - c.  a hospice providing free care to residents receiving the skilled nursing home benefit
  - d.  a hospice providing staff at its expense to perform duties performed by the nursing home
5. For a resident of a Nursing Home, Hospice is financially responsible to pay for all medications related to the terminal illness.  
 TRUE  FALSE
6. Length of time (IN MINUTES) to complete this self study: \_\_\_\_\_

Send this original completed form and \$10 processing fee to:

Hospiscript Services, LLC, Attn: Mary Anne McDowell, 1460 Ann St., Montgomery, AL 36107

## Hospice/Nursing Home Compliance Issues

Cherry Meier, RN, MSN, LNHA  
Vice President of Public Affairs




**VITAS**  
Innovative Hospice Care®

### Objectives

- Identify potential compliance issues in arrangements between hospice and nursing home providers.
- Describe alternative behaviors that demonstrate compliance

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### Philosophical Match



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### Hospice or Not?????

Proposed nursing home rule (483.75 (r) states that a facility may:

- Arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospices; or
- Not arrange for the provision of hospice services at the facility through an agreement with a Medicare-certified hospice and assist the resident in transferring to a facility that will arrange for the provision of hospice services when a resident requests a transfer

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# MDS 3.0

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### MDS 3.0 A1800 Coding Instructions

- Enter the two-digit code that corresponds to the location or program the resident was admitted from for this admission.

A1800. Entered From	
Enter Code	01. Community (private home/apt., board/care, assisted living, group home)
<input type="text"/>	02. Another nursing home or swing bed
<input type="text"/>	03. Acute hospital
<input type="text"/>	04. Psychiatric hospital
<input type="text"/>	05. Inpatient rehabilitation facility
<input type="text"/>	06. MR/DD facility
<input type="text"/>	07. Hospice
<input type="text"/>	99. Other

**MDS 3.0  
A2100 Discharge Status**

- Review the medical record including the discharge plan and discharge orders.
- Select the code that corresponds to the resident's discharge status.

**A2100. Discharge Status**  
Complete only if A0310F = 10, 11, or 12

Enter Code	01 Community (private home/care, board care, assisted living, group home)
	02 Another nursing home or swing bed
	03 Acute hospital
	04 Psychiatric hospital
	05 Inpatient rehabilitation facility
	06 Hospice facility
	07 Hospice
	08 Deceased
	09 Other

**MDS 3.0  
Election of Hospice**

**00100. Special Treatments and Programs**  
Check all of the following treatments, programs and procedures that were performed during the last 14 days.

1. While NOT a Resident  
Procedure performed while NOT a resident of this facility and within the last 14 days. Only check column 1 if procedure occurred on resident's/NTOR L107 14 DAYS. Resident not covered in 14 days. (If more than one, have column 1 checked)

2. While a Resident  
Procedure performed while a resident of this facility and within the last 14 days

Category	1. While NOT a Resident	2. While a Resident
A. Chemotherapy	<input type="checkbox"/>	<input type="checkbox"/>
B. Radiation	<input type="checkbox"/>	<input type="checkbox"/>
C. Cancer Treatments	<input type="checkbox"/>	<input type="checkbox"/>
A. Chemotherapy	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B. Radiation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
D. BMAP/CRP	<input type="checkbox"/>	<input type="checkbox"/>
H. IV medications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I. Transfusions	<input type="checkbox"/>	<input type="checkbox"/>
J. Dialysis	<input type="checkbox"/>	<input type="checkbox"/>
K. Other	<input checked="" type="checkbox"/>	<input type="checkbox"/>
H. IV medications	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
L. Name of the Above	<input type="checkbox"/>	<input type="checkbox"/>
M. Name of the Above	<input type="checkbox"/>	<input type="checkbox"/>

**A0310A Hospice Benefit**

- Electing or revoking the hospice benefit requires a significant change in status

**A0310. Type of Assessment**

Enter Code	A. Federal OBRA Reason for Assessment
	01 Admission assessment (required by day 14)
	02 Quarterly review assessment
	03 Annual assessment
	04 Significant change in status assessment
	05 Significant correction to prior completion

**A. Federal OBRA Reason for Assessment**

Enter Code	01 Admission assessment (required by day 14)
	02 Quarterly review assessment
	03 Annual assessment
	04 Significant change in status assessment
	05 Significant correction to prior completion

**J1400 Coding Instructions**

- Code 1. Yes only if the medical record contains documentation of terminal illness, hospice services, or condition/ chronic disease.

**J1400. Prognosis**  
Does the resident have a condition or chronic disease that may result in a life expectancy of less than 6 months? (Requires physician documentation)

Enter Code	0 No
	1 Yes

**Regulatory Requirements**

**Hospice CoP 418.116  
Role of Hospice**

(c) Standard: Written agreement.

(5) An agreement that it is the hospice's responsibility to provide services at the same level and to the same extent as those services would be provided if the SNF/NF or ICF/MR resident were in his or her own home.

### State Operations Manual- Appendix PP Role of Nursing Home

*Review of a Resident Receiving Hospice Services*

- *The SNF/NF offers the same services to its residents who have elected the hospice benefit as it furnishes to its residents who have not elected the hospice benefit. The resident has the right to refuse services in conjunction with the provisions of 42 CFR 483.10(b)(4), F155.*
- *Deficiency written under F309 tag for Quality of Care*

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### Partnership

Expertise of the nursing home in long-term care

+

Expertise of hospice in end-of-life care


=

Optimal experience for dying residents and their family members

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### Contracts

- *Hospice required to have written agreement before services are provided in 418.116 (c)*
- *Proposed Nursing Home Companion Rule 483.75(r) requires nursing home to have a written agreement*
- *OIG statement acknowledges that an exclusive or semi-exclusive arrangement can promote efficiency and safety but could increase vulnerability to fraud and abuse*
- *Trolling for patients*
- *HIPPA violations*




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### Plan of Care

**Coordinated Care Plan**


- *Identifies the care and services that are need and identifies the responsible provider*
- *Reflects the participation of the hospice, nursing home, patient, family, physicians to the extent possible*
- *Requires the discussion of any changes with all parties*



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### Duplicate Drug Claims OIG FY 2010 Work Plan

*The OIG will review the appropriateness of drug claims for beneficiaries who receive hospice benefits under Medicare Part A and drug coverage under Medicare Part D. Hospice providers are required for the drugs related to the beneficiary's terminal illness and Part D drugs should not pay for drugs that should be covered under the beneficiary's Medicare hospice benefits under Part A.*



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### Supplies and Durable Medical Equipment

**Duplication in both per diem rates**

- *Hospice responsible for providing services at the same level and to the same extent as those services would be provided in the patient's home*
- *OIG warns of a suspected kickback if a hospice pays amounts to the nursing home for services that Medicaid considers included in its room and board payment to the nursing home*

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# Financial Arrangements

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## OIG Suspected Kickbacks March 1998

- A hospice offering free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice.
- A hospice paying "room and board" payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicaid had the patient not been enrolled in hospice.
- A 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.
- A 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.

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## OIG Suspected Kickbacks March 1998 (cont)

- A hospice referring its patients to a nursing home to induce the nursing home to refer its patients to the hospice.
- A 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.
- A hospice providing staff at its expense to the nursing home to perform duties that otherwise would be performed by the nursing home.

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## General Inpatient Care



- Hospital or SNF has 24 RN, providing direct care
- Short-term stay
- Management of acute symptoms, psychosocial crisis, imminent death requiring skilled nursing interventions
- Documentation reflects skilled nursing care
- Hospice may receive "added pressure" to utilize GIP

## Continuous Care

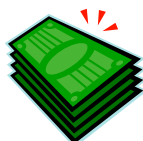
- Similar to General Inpatient Care in that it must be a crisis situation to initiate care
- Patient does not want to go to the hospital
- Short term basis
- Documentation must reflect skilled nursing care is provided over 50% of the time
- Must have a minimum of 8 hours in one day to bill

# Billing

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**Dual Skilling**

- A resident can access their Medicare Part A Skilled Nursing Home Benefit and Hospice simultaneously
- If accessing both, the diagnosis for the Nursing Home Benefit must not be related to the terminal illness
- Who is in control of the plan of care?
- MAC transition will be able to pick up situation
- This should be a rare event!



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**Location of Care  
CMS Change Request (CR) 5245**

- Clarified billing codes for levels of care while a patient resides in a nursing home:
- The patient must be in a Skilled Bed (5004) in order to bill for GIP
  - Continuous Care is provided in a Non-Skilled Bed (5003) and will be returned if the code is 5004

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*Additional  
Concerns*

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**Hospice Utilization in Nursing Facilities  
OIG Work Plan FY 2011**

*We will examine the characteristics of nursing facilities with high utilization patterns of Medicare hospice care and the characteristics of nursing facilities with high utilization patterns of Medicare hospice care and the characteristics of the hospice that serve them.*

*We will also assess the business relationships between nursing facilities and hospices and access the marketing practices and materials of hospices associated with high utilization patterns.*

OEI; 02-10-00070



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**Services Provided to Hospice Beneficiaries Residing in  
Nursing Facilities, OIG Work Plan FY 2011**

*We will review the services that hospices and nursing facilities provide to hospice beneficiaries residing in nursing facilities, including services by hospice-based home health aides.*

*We will review hospice and nursing facility medical records, including plans of care. We will determine the extent to which hospices and nursing facilities coordinate care and identify service and payment arrangements between them.*

*We will also assess the appropriateness of hospices' general inpatient care claims.*

OEI; 02-10-00490



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**OIG Report, September 2009**

OE 1-02-06-00221

*Eighty-two percent of claims for Hospice Benefit in the Nursing Home did not meet at least one Medicare coverage requirement pertaining to election statements, plans of care, services or certification of terminal illness.*



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### MedPAC

- Suggested changes in reimbursement for Hospice providers
- Question as to whether there will be a specific per diem for patients residing in nursing homes
- Problem with duplication of services in the Hospice Benefit and the Medicaid Room & Board payment

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### Center for Gerontology and Health Care Research, Brown University

Susan Miller, Ph.D. has found in her research that:

*"Successful collaborations are partnerships where care planning, coordination and provision are performed in care environments where mutual respect dominates; providers routinely share knowledge; and policies and procedures clarify the roles of each collaborating party; but, much unwritten, and importantly, hospice presence, consistency and communication are key – a customer service approach facilitates success."*



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### Questions & Answers



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**§ 418.112 Condition of participation: Hospices that provide hospice care to residents of a SNF/NF or ICF/MR.**

In addition to meeting the conditions of participation at § 418.10 through § 418.116, a hospice that provides hospice care to residents of a SNF/NF or ICF/MR must abide by the following additional standards.

**(a) Standard: Resident eligibility, election, and duration of benefits.**

Medicare patients receiving hospice services and residing in a SNF, NF, or ICF/MR are subject to the Medicare hospice eligibility criteria set out at § 418.20 through § 418.30.

**(b) Standard: Professional management.** The hospice must assume responsibility for professional management of the resident's hospice services provided, in accordance with the hospice plan of care and the hospice conditions of participation, and make any arrangements necessary for hospice-related inpatient care in a participating Medicare/Medicaid facility according to § 418.100 and § 418.108.

**(c) Standard: Written agreement.** The hospice and SNF/NF or ICF/MR must have a written agreement that specifies the provision of hospice services in the facility. The agreement must be signed by authorized representatives of the hospice and the SNF/NF or ICF/MR before the provision of hospice services. The written agreement must include at least the following:

- (1) The manner in which the SNF/NF or ICF/MR and the hospice are to communicate with each other and document such communications to ensure that the needs of patients are addressed and met 24 hours a day.
- (2) A provision that the SNF/NF or ICF/MR immediately notifies the hospice if—
  - (i) A significant change in a patient's physical, mental, social, or emotional status occurs;
  - (ii) Clinical complications appear that suggest a need to alter the plan of care;
  - (iii) A need to transfer a patient from the SNF/NF or ICF/MR, and the hospice makes arrangements for, and remains responsible for, any necessary continuous care or inpatient care necessary related to the terminal illness and related conditions; or
  - (iv) A patient dies.
- (3) A provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided.
- (4) An agreement that it is the SNF/ NF or ICF/MR responsibility to continue to furnish 24 hour room and board care, meeting the personal care and nursing needs that would have been provided by

- the primary caregiver at home at the same level of care provided before hospice care was elected.
- (5) An agreement that it is the hospice's responsibility to provide services at the same level and to the same extent as those services would be provided if the SNF/NF or ICF/MR resident were in his or her own home.
  - (6) A delineation of the hospice's responsibilities, which include, but are not limited to the following: Providing medical direction and management of the patient; nursing; counseling (including spiritual, dietary and bereavement); social work; provision of medical supplies, durable medical equipment and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions.
  - (7) A provision that the hospice may use the SNF/NF or ICF/MR nursing personnel where permitted by State law and as specified by the SNF/NF or ICF/ MR to assist in the administration of prescribed therapies included in the plan of care only to the extent that the hospice would routinely use the services of a hospice patient's family in implementing the plan of care.
  - (8) A provision stating that the hospice must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone unrelated to the hospice to the SNF/NF or ICF/MR administrator within 24 hours of the hospice becoming aware of the alleged violation.
  - (9) A delineation of the responsibilities of the hospice and the SNF/NF or ICF/MR to provide bereavement services to SNF/NF or ICF/ MR staff.

**(d) Standard: Hospice plan of care.** In accordance with § 418.56, a written hospice plan of care must be established and maintained in consultation with SNF/NF or ICF/MR representatives. All hospice care provided must be in accordance with this hospice plan of care.

- (1) The hospice plan of care must identify the care and services that are needed and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the hospice plan of care.
- (2) The hospice plan of care reflects the participation of the hospice, the SNF/NF or ICF/MR, and the patient and family to the extent possible.
- (3) Any changes in the hospice plan of care must be discussed with the patient or representative, and SNF/NF or ICF/MR representatives, and must be approved by the hospice before implementation.

**(e) Standard: Coordination of services.** The hospice must:

- (1) Designate a member of each interdisciplinary group that is responsible for a patient who is a resident of a SNF/NF or ICF/MR. The designated interdisciplinary group member is responsible for:
  - (i) Providing overall coordination of the hospice care of the SNF/NF or ICF/ MR resident with SNF/NF or ICF/MR representatives; and
  - (ii) Communicating with SNF/NF or ICF/MR representatives and other health care providers participating in the provision of care for the terminal illness and related conditions and other conditions to ensure quality of care for the patient and family.
- (2) Ensure that the hospice IDG communicates with the SNF/NF or ICF/ MR medical director, the patient's attending physician, and other physicians participating in the provision of care to the patient as needed to coordinate the hospice care of the hospice patient with the medical care provided by other physicians.
- (3) Provide the SNF/NF or ICF/MR with the following information:
  - (i) The most recent hospice plan of care specific to each patient;
  - (ii) Hospice election form and any advance directives specific to each patient;
  - (iii) Physician certification and recertification of the terminal illness specific to each patient;
  - (iv) Names and contact information for hospice personnel involved in hospice care of each patient;
  - (v) Instructions on how to access the hospice's 24-hour on-call system;
  - (vi) Hospice medication information specific to each patient; and
  - (vii) Hospice physician and attending physician (if any) orders specific to each patient.

**(f) Standard: Orientation and training of staff.** Hospice staff must assure orientation of SNF/NF or ICF/MR staff furnishing care to hospice patients in the hospice philosophy, including hospice policies and procedures regarding methods of comfort, pain control, symptom management, as well as principles about death and dying, individual responses to death, patient rights, appropriate forms, and record keeping requirements.

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### ***Review of a Resident Receiving Hospice Services.***

*When a facility resident has also elected the Medicare hospice benefit, the hospice and the nursing home must communicate, establish, and agree upon a coordinated plan of care for both providers which reflects the hospice philosophy, and is based on an assessment of the individual's needs and unique living situation in the facility. The plan of care must include directives for managing pain and other uncomfortable symptoms and be revised and updated as necessary to reflect the individual's current status. This coordinated plan of care must identify the care and services which the SNF/NF and hospice will provide in order to be responsive to the unique needs of the patient/resident and his/her expressed desire for hospice care.*

*The SNF/NF and the hospice are responsible for performing each of their respective functions that have been agreed upon and included in the plan of care. The hospice retains overall professional management responsibility for directing the implementation of the plan of care related to the terminal illness and related conditions.*

*For a resident receiving hospice benefit care, evaluate if:*

- The plan of care reflects the participation of the hospice, the facility, and the resident or representative to the extent possible;*
- The plan of care includes directives for managing pain and other uncomfortable symptoms and is revised and updated as necessary to reflect the resident's current status;*
- Medications and medical supplies are provided by the hospice as needed for the palliation and management of the terminal illness and related conditions;*
- The hospice and the facility communicate with each other when any changes are indicated to the plan of care;*
- The hospice and the facility are aware of the other's responsibilities in implementing the plan of care;*
- The facility's services are consistent with the plan of care developed in coordination with the hospice, (the hospice patient residing in a SNF/NF should not experience any lack of SNF/NF services or personal care because of his/her status as a hospice patient); and*
- The SNF/NF offers the same services to its residents who have elected the hospice benefit as it furnishes to its residents who have not elected the hospice benefit. The resident has the right to refuse services in conjunction with the provisions of 42 CFR 483.10(b)(4), F155.*

**Note:** *If a resident is receiving services from a Medicare certified hospice and the hospice was advised of concerns by the facility and failed to address and/or resolve issues related to coordination of care or implementation of appropriate services, refer the concerns as a complaint to the State Agency responsible for oversight of this hospice, identifying the specific resident(s) involved and the concerns identified.*



# OFFICE OF INSPECTOR GENERAL

## SPECIAL FRAUD ALERT

### **FRAUD AND ABUSE IN NURSING HOME ARRANGEMENTS WITH HOSPICES**

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March 1998

The Office of Inspector General was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations, and inspections.

To reduce fraud and abuse in the Federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify segments of the health care industry that are particularly vulnerable to abuse. This Special Fraud Alert focuses on the interrelationship between the hospice and nursing home industries and describes some potentially illegal practices the OIG has identified in arrangements between these providers.

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#### **What Is Hospice Care And Who Is Eligible To Receive It**

Medicare's hospice benefit provides palliative care to individuals who are terminally ill. Palliative care focuses on pain control, symptom management, and counseling for both the patient and family. Medicare hospice payments increased from about \$958 million for Fiscal Year 1993 to over \$1.8 billion for Fiscal Year 1995. Although the hospice benefit is still a relatively small portion of total Medicare Part A expenditures (about 1.5 percent), it has grown considerably over the past several years.

In order to elect the hospice benefit, a Medicare beneficiary must be entitled to Medicare Part A services and certified as terminally ill, which is defined as a

medical prognosis of a life expectancy of 6 months or less if the illness runs its normal course. A beneficiary who elects to enroll in a hospice program waives his or her rights to all curative care related to his or her terminal illness. Medicare will continue to pay for services furnished by the patient's non-hospice attending physician and for the treatment of conditions unrelated to the terminal illness.

The hospice must have a written plan of care which covers physician and nursing services; physical, occupational, and speech therapy; medical social services; home health aides and homemakers; short-term inpatient care; counseling; respite care; and medical supplies, including drugs and biologicals. Certain of the hospice services ("core services") must be provided directly to the beneficiary by employees of the hospice, while other non-core hospice services may be provided in accordance with contracts with other providers. However, the hospice must retain professional management for all contracted services.

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## **Reimbursement For Hospice Care Provided In Nursing Homes**

Medicare does not have a separate payment rate for routine hospice services provided in a nursing home. Because hospice services are typically provided to patients in their homes, the routine home care hospice rate does not include any payment for room or board. For services provided to patients in nursing homes, hospices receive the Medicare routine home care rate, which is a fixed amount per day for the services provided by the hospice, regardless of the volume or intensity of the services provided. Accordingly, where the hospice patient resides in a nursing home, the patient remains responsible for payment of the nursing home's room and board charges.

If, however, a patient receiving Medicare hospice benefits in a nursing home is also eligible for Medicaid, Medicaid will pay the hospice at least 95 percent of the State's daily nursing home rate, and the hospice is then responsible for paying the nursing home for the beneficiary's room and board. The specific services included in the daily rate payment are determined by a State's Medicaid program and may vary from State to State.

In addition to the room and board payment, a hospice may contract with the nursing home for the nursing home to provide non-core hospice services (i.e., those services which the hospice is not required by law to provide itself) to its hospice patients.

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## **Vulnerabilities In Nursing Home Arrangements With Hospices**

Hospice services may be appropriate and beneficial to terminally ill nursing home residents who wish to receive palliative care. However, arrangements between nursing homes and hospices are vulnerable to fraud and abuse because nursing home operators have control over the specific hospice or hospices they will permit to provide hospice services to their residents. An exclusive or semi-exclusive arrangement with a nursing home to provide hospice services to its residents may have substantial monetary value to a hospice. In these circumstances, some nursing home operators and/or hospices may request or offer illegal remuneration to influence a nursing home's decision to do business with a particular hospice.

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. A recent OIG report found that residents of certain nursing homes receive fewer services from their hospice than patients in their own homes. Since hospices receive a fixed daily payment regardless of the number of services provided or the location of the patient, fewer services may result in higher profits per patient.

However, a hospice's access to nursing home patients depends on the nursing home operator. Nursing home operators may restrict residents to one or two hospice providers. While an exclusive or semi-exclusive arrangement can promote efficiency and safety by permitting the nursing home operator to coordinate care, screen hospice caregivers, and maintain control of the premises, it also enhances the value of the nursing home operator's decision. In these circumstances, some nursing home operators or hospices may request or offer illegal inducements to influence the selection of a hospice.

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## **Paying Or Receiving Kickbacks In Order To Induce Medicare Or Medicaid Referrals**

Because kickbacks can distort medical decision making, result in overutilization, and have an adverse effect on the quality of care patients receive, they are prohibited under the Federal health care programs, including Medicare and Medicaid. Under the anti-kickback statute, it is illegal 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.

The OIG has observed instances of potential kickbacks between hospices and nursing homes to influence the referral of patients. In general, payments by a hospice to a nursing home for "room and board" provided to a Medicaid hospice patient should not

exceed what the nursing home otherwise would have received if the patient had 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.

Specific practices which are suspected kickbacks include:

- ◆ A hospice offering free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice.
- ◆ A hospice paying “room and board” payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicaid had the patient not been enrolled in hospice.
- ◆ A 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.
- ◆ A 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.
- ◆ A hospice referring its patients to a nursing home to induce the nursing home to refer its patients to the hospice.
- ◆ A 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.
- ◆ A hospice providing staff at its expense to the nursing home to perform duties that otherwise would be performed by the nursing home.

Parties that violate the anti-kickback statute may be criminally prosecuted or subject to civil monetary penalties, and also may be subject to exclusion from the Federal health care programs.

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## **What To Do If You Suspect Fraud Involving Arrangements Between Nursing Homes and Hospices**

If you have information about nursing homes and hospices engaging in any of the activities described above, contact any of the regional offices of the Office of

Investigations of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

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<b>Field Offices</b>	<b>States Served</b>	<b>Telephone</b>
Boston	MA, VT ,NH, ME, RI, CT	617-565-2660
New York	NY, NJ, PR, VI	212-264-1691
Philadelphia	PA, MD, DE, WV, VA, DC	215-596-6796 - before 5/11/98 215-861-4586 - after 5/11/98
Atlanta	GA, KY, NC, SC, FL, TN, AL, MS	404-562-7603
Chicago	IL, MN, WI, MI, IN, OH, IA, MO	312-353-2740
Dallas	TX, NM, OK, AR, LA, CO, UT, WY, MT, ND, SD, NE, KS	214-767-8406
Los Angeles	AZ, NV, So. CA	714-246-8302
San Francisco	No. CA, AK, HI OR, ID, WA	415-437-7960

## Hospice/Nursing Home Compliance Issues

Cherry Meier, RN, MSN, LNHA  
Vice President of Public Affairs

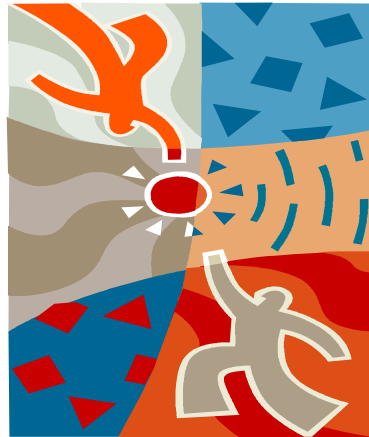


**VITAS**  
Innovative  
Hospice Care®

### Objectives

- *Identify potential compliance issues in arrangements between hospice and nursing home providers.*
- *Describe alternative behaviors that demonstrate compliance*

## Philosophical Match



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## Hospice or Not?????

*Proposed nursing home rule (483.75 (r) states that a facility may:*

- *Arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospices; or*
- *Not arrange for the provision of hospice services at the facility through an agreement with a Medicare-certified hospice and assist the resident in transferring to a facility that will arrange for the provision of hospice services when a resident requests a transfer*

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# MDS 3.0

5

## MDS 3.0 A1800 Coding Instructions

- *Enter the two-digit code that corresponds to the location or program the resident was admitted from for this admission.*

A1800. Entered From	
Enter Code	01. <b>Community</b> (private home/apt., board/care, assisted living, group home)
<input type="text"/>	02. <b>Another nursing home or swing bed</b>
<input type="text"/>	03. <b>Acute hospital</b>
	04. <b>Psychiatric hospital</b>
	05. <b>Inpatient rehabilitation facility</b>
	06. <b>MR/DD facility</b>
	07. <b>Hospice</b>
	99. <b>Other</b>

### MDS 3.0 A2100 Discharge Status

- Review the medical record including the discharge plan and discharge orders.
- Select the code that corresponds to the resident's discharge status.

**A2100. Discharge Status**  
Complete only if A0310F = 10, 11, or 12

Enter Code	01. <b>Community</b> (private home/apt., board/care, assisted living, group home)
<input type="text"/>	02. <b>Another nursing home or swing bed</b>
<input type="text"/>	03. <b>Acute hospital</b>
	04. <b>Psychiatric hospital</b>
	05. <b>Inpatient rehabilitation facility</b>
	06. <b>MR/DD facility</b>
	07. <b>Hospice</b>
	08. <b>Deceased</b>
	99. <b>Other</b>

### MDS 3.0 Election of Hospice

**O0100. Special Treatments and Programs**  
Check all of the following treatments, programs and procedures that were performed during the last 14 days

	1. While NOT a Resident	2. While a Resident
1. While NOT a Resident Procedure performed while NOT a resident of this facility and within the last 14 days. Only check column 1 if resident entered (admission or reentry) IN THE LAST 14 DAYS. If resident last entered 14 or more days ago, leave column 1 blank		
2. While a Resident Procedure performed while a resident of this facility and within the last 14 days		
↓ Check all that apply ↓		
<b>Cancer Treatments</b>		
A. Chemotherapy	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B. Radiation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Respiratory Treatments</b>		
C. Oxy	<input type="checkbox"/>	<input type="checkbox"/>
D. Suct	<input type="checkbox"/>	<input type="checkbox"/>
E. Trac	<input type="checkbox"/>	<input type="checkbox"/>
F. Vent	<input type="checkbox"/>	<input type="checkbox"/>
G. BiPAP/CPAP	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b>		
H. IV medications	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
I. Transfusions	<input type="checkbox"/>	<input type="checkbox"/>
J. Dialysis	<input type="checkbox"/>	<input type="checkbox"/>
K. Wou	<input type="checkbox"/>	<input type="checkbox"/>
L. Res	<input type="checkbox"/>	<input type="checkbox"/>
M. Isol (precautions)	<input type="checkbox"/>	<input type="checkbox"/>
<b>None of the Above</b>		
Z. None of the above	<input type="checkbox"/>	<input type="checkbox"/>

### A0310A Hospice Benefit

- *Electing or revoking the hospice benefit requires a significant change in status*

A0310. Type of Assessment	
Enter Code	<b>A. Federal OBRA Reason for Assessment</b>
<input type="checkbox"/>	01. Admission assessment (required by day 14)
<input type="checkbox"/>	02. Quarterly review assessment
<input type="checkbox"/>	03. Annual assessment
<input type="checkbox"/>	04. Significant change in status assessment
<input type="checkbox"/>	05. Significant correction to prior completion

### J1400 Coding Instructions

- *Code 1. Yes only if the medical record contains documentation of terminal illness, hospice services, or condition/ chronic disease.*

J1400. Prognosis	
Enter Code	Does the resident have a condition or chronic disease that may result in a life expectancy of less than 6 months? (Requires physician documentation)
<input type="checkbox"/>	0. No
<input type="checkbox"/>	1. Yes

# *Regulatory Requirements*

11

## **Hospice CoP 418.116 Role of Hospice**

*(c) Standard: Written agreement.*

*(5) An agreement that it is the hospice's responsibility to provide services at the same level and to the same extent as those services would be provided if the SNF/NF or ICF/MR resident were in his or her own home.*

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## State Operations Manual- Appendix PP Role of Nursing Home

### *Review of a Resident Receiving Hospice Services*

- *The SNF/NF offers the same services to its residents who have elected the hospice benefit as it furnishes to its residents who have not elected the hospice benefit. The resident has the right to refuse services in conjunction with the provisions of 42 CFR 483.10(b)(4), F155.*
- *Deficiency written under F309 tag for Quality of Care*

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## Partnership

Expertise of the nursing home in long-term care + Expertise of hospice in end-of-life care =

Optimal experience for dying residents and their family members

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## Contracts

- *Hospice required to have written agreement before services are provided in 418.116 (c)*
- *Proposed Nursing Home Companion Rule 483.75(r) requires nursing home to have a written agreement*
- *OIG statement acknowledges that an exclusive or semi-exclusive arrangement can promote efficiency and safety but could increase vulnerability to fraud and abuse*
- *Trolling for patients*
- *HIPPA violations*



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## Plan of Care

### **Coordinated Care Plan**

- *Identifies the care and services that are need and identifies the responsible provider*
- *Reflects the participation of the hospice, nursing home, patient, family, physicians to the extent possible*
- *Requires the discussion of any changes with all parties*



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## Duplicate Drug Claims OIG FY 2010 Work Plan

*The OIG will review the appropriateness of drug claims for beneficiaries who receive hospice benefits under Medicare Part A and drug coverage under Medicare Part D. Hospice providers are required for the drugs related to the beneficiary's terminal illness and Part D drugs should not pay for drugs that should be covered under the beneficiary's Medicare hospice benefits under Part A.*



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## Supplies and Durable Medical Equipment

### ***Duplication in both per diem rates***

- *Hospice responsible for providing services at the same level and to the same extent as those services would be provided in the patient's home*
- *OIG warns of a suspected kickback if a hospice pays amounts to the nursing home for services that Medicaid considers included in its room and board payment to the nursing home*

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# *Financial Arrangements*

19

## **OIG Suspected Kickbacks March 1998**

- *A hospice offering free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice.*
- *A hospice paying "room and board" payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicaid had the patient not been enrolled in hospice.*
- *A 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.*
- *A 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.*

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### **OIG Suspected Kickbacks March 1998 (cont)**

- *A hospice referring its patients to a nursing home to induce the nursing home to refer its patients to the hospice.*
- *A 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.*
- *A hospice providing staff at its expense to the nursing home to perform duties that otherwise would be performed by the nursing home.*

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### **General Inpatient Care**



- *Hospital or SNF has 24 RN, providing direct care*
- *Short-term stay*
- *Management of acute symptoms, psychosocial crisis, imminent death requiring skilled nursing interventions*
- *Documentation reflects skilled nursing care*
- *Hospice may receive “added pressure” to utilize GIP*

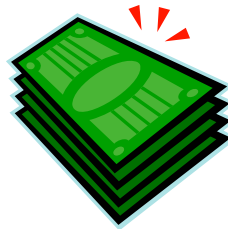
## Continuous Care

- *Similar to General Inpatient Care in that it must be a crisis situation to initiate care*
- *Patient does not want to go to the hospital*
- *Short term basis*
- *Documentation must reflect skilled nursing care is provided over 50% of the time*
- *Must have a minimum of 8 hours in one day to bill*

***Billing***

## Dual Skilling

- *A resident can access their Medicare Part A Skilled Nursing Home Benefit and Hospice simultaneously*
- *If accessing both, the diagnosis for the Nursing Home Benefit must not be related to the terminal illness*
- *Who is in control of the plan of care?*
- *MAC transition will be able to pick up situation*
- *This should be a rare event!*



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## Location of Care CMS Change Request (CR) 5245

*Clarified billing codes for levels of care while a patient resides in a nursing home:*

- *The patient must be in a Skilled Bed (5004) in order to bill for GIP*
- *Continuous Care is provided in a Non-Skilled Bed (5003) and will be returned if the code is 5004*

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# *Additional Concerns*

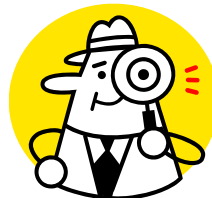
27

## **Hospice Utilization in Nursing Facilities OIG Work Plan FY 2011**

*We will examine the characteristics of nursing facilities with high utilization patterns of Medicare hospice care and the characteristics of nursing facilities with high utilization patterns of Medicare hospice care and the characteristics of the hospice that serve them.*

*We will also assess the business relationships between nursing facilities and hospices and access the marketing practices and materials of hospices associated with high utilization patterns.*

OEI; 02-10-00070



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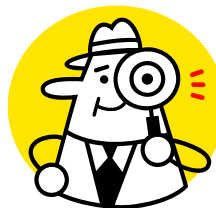
### Services Provided to Hospice Beneficiaries Residing in Nursing Facilities, OIG Work Plan FY 2011

*We will review the services that hospices and nursing facilities provide to hospice beneficiaries residing in nursing facilities, including services by hospice-based home health aides.*

*We will review hospice and nursing facility medical records, including plans of care. We will determine the extent to which hospices and nursing facilities coordinate care and identify service and payment arrangements between them.*

*We will also assess the appropriateness of hospices' general inpatient care claims.*

OEI; 02-10-00490



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### OIG Report, September 2009

OE 1-02-06-00221

*Eighty-two percent of claims for Hospice Benefit in the Nursing Home did not meet at least one Medicare coverage requirement pertaining to election statements, plans of care, services or certification of terminal illness.*



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## MedPAC

- *Suggested changes in reimbursement for Hospice providers*
- *Question as to whether there will be a specific per diem for patients residing in nursing homes*
- *Problem with duplication of services in the Hospice Benefit and the Medicaid Room & Board payment*

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## Center for Gerontology and Health Care Research, Brown University

*Susan Miller, Ph.D. has found in her research that:*

*“Successful collaborations are partnerships where care planning, coordination and provision are performed in care environments where mutual respect dominates; providers routinely share knowledge; and policies and procedures clarify the roles of each collaborating party; but, much unwritten, and importantly, hospice presence, consistency and communication are key – a customer service approach facilitates success.”*



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## Questions & Answers



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