Arnall Golden Gregory LLP

Client Alert

Contact Attorneys Regarding This Matter:

H. Carol Saul
404.873.8694 - direct
404.873.8695 - fax
carol.saul@agg.com

Christy D. Jordan
404.873.8514 - direct
404.873.8515 - fax
christy.jordan@agg.com

Hospice Services to Nursing Facility Residents Face Increased Scrutiny, Payment Cuts

Following on the heels of reports by the U.S. Department of Health & Human Services Office of Inspector General (OIG) and the Medicare Payment Advisory Commission (MedPac) raising questions about the delivery of hospice care in the nursing facility setting, the 2012 OIG Work Plan announces a new focus on hospice marketing practices and financial relationships with nursing facilities.

The OIG's July 2011 report, titled "Medicare Hospices that Focus on Nursing Facility Residents," found that in 2006, 31 percent of Medicare hospice beneficiaries resided in nursing facilities and that 82 percent of hospice claims for such beneficiaries did not meet coverage requirements. Almost 8 percent of hospices had two-thirds or more of their Medicare patients in nursing facilities, and most such "high-percentage" hospices were also for-profit and on average served 20 different nursing facilities. Such high-percentage hospices were found to have received more payments per beneficiary and to serve patients with longer lengths of stay whose diagnoses required less complex care.

As a result of these findings, the OIG recommended that the Centers for Medicare & Medicaid Services (CMS) step up its monitoring of hospices that depend heavily on nursing facility residents, and reduce Medicare payments for hospice care in the nursing facility setting. Notably, the Affordable Care Act calls for CMS to reform hospice payments no earlier than October 2013. CMS concurred with both recommendations and stated that it would share the findings with Recovery Audit Contractors (RACs) and Medicare Administrative Contractors (MACs), and emphasize to the MACs to prioritize their medical review and intervention strategies accordingly.

The MedPac report, presented to Congress in March 2011, made the following recommendations relevant to hospice care in a nursing facility setting:

"The Secretary should direct the HHS Office of Inspector General to investigate:

- the prevalence of financial relationships between hospices and long-term care facilities such as nursing facilities and assisted living facilities that may represent a conflict of interest and influence admissions to hospice;
- differences in patterns of nursing home referrals to hospice;
- the appropriateness of enrollment practices for hospices with unusual utilization patterns (e.g., high frequency of very long stays, very short stays or enrollment of patients discharged from other hospices); and

Arnall Golden Gregory LLP
Attorneys at Law

171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500

2001 Pennsylvania Avenue NW
Suite 250
Washington DC 20006
202.677.4030

www.agg.com

- the appropriateness of hospice marketing materials and other admissions practices and potential correlations between length of stay and deficiencies in marketing or admissions practices."

Presumably in response to these recommendations, in the 2012 OIG Work Plan, released earlier this month, the OIG announced a follow-up review of hospices' marketing materials and practices targeting nursing facilities and their financial relationships generally with nursing facilities.

Although this Work Plan focus is described only in general terms, it is likely that hospice providers that provide a high percentage of care in nursing facilities, particularly for-profit hospices, will face heightened scrutiny. Areas of scrutiny may include the following:

- whether marketers and their written materials adequately explain the requirements for the hospice election (such as waiver of curative care, patient capacity, right to revoke);
- whether patients are admitted who are not terminally ill as defined by hospice regulation;
- financial incentives to nursing facilities (such as free staff, rental payments for office space, meals, entertainment, training, free discharge planning cloaked as intake coordination); and
- sales commissions based on hospice length of stay.

To read the July 2011 OIG report titled "Medicare Hospices that Focus on Nursing Facility Residents," please click here.[1] To view the MedPac report referenced above, please click here.[2] To review the 2012 OIG Work Plan, please click here.[3]

1 http://oig.hhs.gov/oei/reports/oei-02-10-00070.asp
2 http://www.medpac.gov/chapters/mar11_ch11.pdf
3 http://oig.hhs.gov/reports-and-publications/archives/workplan/2012/work-plan-2012.pdf

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