

JULY 22, 2011

OIG: EXPAND OVERSIGHT AND REDUCE INCENTIVES TO HOSPICES FOCUSING ON NURSING FACILITY RESIDENTS

Recently, the Office of Inspector General ("OIG") published a report of its findings pertaining to the nearly 70% growth of Medicare spending for hospice care provided to nursing facility ("NF") residents from 2005 - 2009. During that time, Medicare spending on hospice care for residents in NFs increased sixty-nine percent (69%) from \$2.55 billion to \$4.31 billion; while the number of NF residents receiving Medicare-funded hospice care increased only by forty percent (40%). In its report, the OIG informally designated hospices with more than 2/3 of their patients residing in NFs as "high-percentage hospices." This report comes on the tail of the Medicare Payment Advisory Commission ("MedPAC") 2009 report to Congress that hospices and NFs may be involved in inappropriate enrollment and compensation.

The OIG recommended to the Centers for Medicare and Medicaid Services ("CMS") that CMS: (1) Monitor hospices that depend heavily on NF residents and (2) Modify the payment system for hospice care in NFs. CMS concurred with both of OIG's recommendations. CMS stated it will share the information with Recovery Audit Contractors ("RAC"), who review Medicare claims on a post-payment basis to identify inappropriate payments, and Medicare Administrative Contractors ("MAC") to monitor high percentage hospices. CMS further stated it is in the early stages of reform efforts for the payment system that may be currently and unintentionally be incentivizing hospices to seek out beneficiaries in NFs.

Clearly, this July 2011 report is neither the beginning nor end of the scrutiny over high-percentage hospices and CMS has indicated changes in payment for hospice care to NF residents are on the horizon. The OIG's report, the first in a series, focuses on the OIG's and MedPac's increasing concerns pertaining to the relationships between hospices, especially for-profit hospice providers, and NFs. The OIG plans to look at and later release companion reports on the marketing practices of these hospices and their business relationship with NFs. Enforcement activity is anticipated to increase.

Given these trends and the OIG's and CMS' increased scrutiny of these high percentage hospice's business practices - namely involving marketing and patient enrollment - hospices and NFs should exercise extreme vigilance to ensure compliance with all of the rules and regulations governing Medicare reimbursement.

If you have any questions regarding this OIG report, please contact your regular Hall Render attorney, or Todd Selby at tselby@hallrender.com or 317.977.1440, or Kendra Conover at kconover@hallrender.com or 317.977.1456.