



# NewsLine

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*Nearly one-third (31%) of Medicare beneficiaries served by hospice in 2006 resided in nursing homes,<sup>1</sup> and as baby boomers age, the numbers will clearly increase. Understanding the challenges and regulatory concerns that today's nursing homes face can go a long way in helping you improve your relationship with them. In this article, Meg Pekarske, co-chair of the Hospice & Palliative Care Practice Group at the law firm of Reinhart Boerner Van Deuren, provides fresh perspective—and practical ways to meet in the middle.*

## Putting Yourself in Their Shoes:

### ***Fresh Perspective to Improve Your Work with Nursing Homes***

***By Meg S.L. Pekarske, JD***

**H**ospices and nursing homes have a unique relationship that government regulators, enforcement agencies and policymakers have explored and will continue to analyze. For example, CMS, recognizing the importance of this relationship, created a specific regulation to address requirements for providing hospice care to nursing home residents (42 C.F.R. §418.112). The Office of the Inspector General (OIG) has also frequently identified this relationship as vulnerable to abuse and potential kickbacks.

The goal of this article is not to provide an extensive analysis of these specific legal issues, but rather, to take a step back and discuss practical ways that hospices can improve their nursing home relationships. To begin with, hospices can take steps to understand the nursing home's world. Building on this understanding, hospices can identify areas where they can add value and improve collaboration by asking the basic question, "If I were a nursing home, what would I want from a hospice partner?"

*continued on next page*

## Inside

### **Social Media: Why All the Fuss?**

Find out who's really using social media, how hospices are harnessing its power, and tips on using it more fully yourself.

### **A Message from Don**

NHPCO president/CEO, Don Schumacher, talks about two promising steps being taken here in Washington (yes, Washington!).

### **NHPCO's Regulatory Team: Answering Your Questions in Person**

By the end of the year, NHPCO's Regulatory team will have visited members in 21 states. See where they've been—and where they're headed.

### **Performance Improvement Online Training**

NHPCO's E-OL has introduced a 2.5-hour online course on how to conduct a "PIP" to help meet Medicare's QAPI requirements. Learn more—and watch an excerpt.

## **Plus:**

### **People and Places**

News and notes about NHPCO members.

### **Educational Offerings**

NHPCO conferences, Webinars, webcasts and E-OL courses.





## **A Day in the Life of a Nursing Home**

Even though they serve many of the same patients, the realities facing hospices and nursing homes differ significantly. Hospices often may not understand the nursing home's world, leading to missed opportunities for improved collaboration. The following provides a brief introduction to some of the key challenges facing nursing homes today.

### ***Financial Pressures***

Hospices and nursing homes both face financial pressures, but in different forms. Unlike hospices that receive most of their reimbursement from Medicare, Medicaid is generally the payor source for the majority of nursing home residents. Medicaid rates are often below the facility's actual costs and are significantly lower than Medicare rates for skilled nursing care. At the same time, nursing homes are having to care for a sicker and frailer population, given that individuals who have more limited care needs are able to live in assisted living facilities. With state-budget crises leaving Medicaid reimbursement levels at risk, many facilities are struggling to find ways to meet the needs of higher acuity residents with even lower reimbursement.

### ***Goals of Care***

While hospices focus on providing services to palliate and manage the terminal illness, nursing homes are obligated to provide "the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being" for their residents.<sup>2</sup> Hospice patients are expected to decline, but nursing homes can face survey citations for the decline their residents

experience, unless they can demonstrate that the decline was "unavoidable."<sup>3</sup>

Nursing home regulatory obligations may also encourage nursing homes to take a protective approach that can be at odds with the hospice philosophy of patient self-determination. Although the nursing home regulations are moving more in the direction of "resident-centered care," nursing homes are left with a difficult balancing act, as illustrated by the following CMS guidance on protecting residents from accidents:

"The responsibility to respect a resident's choices is balanced by considering the potential impact of these choices on other individuals and on the facility's obligation to protect the residents from harm.... Consent by resident or responsible party alone does not relieve the provider of its responsibility to assure the health, safety, and welfare of its residents, including protecting them from avoidable accidents."<sup>4</sup>

### ***Regulatory Oversight***

Although hospices face significant regulatory obligations, nursing home regulations dwarf hospice regulations in comparison. For example, the Interpretative Guidelines for nursing homes currently stand at 665 pages (compared with 149 pages for hospices), and CMS updates this guidance frequently. Many nursing home regulations are also very specific in their requirements, yet they also contain very broad catch-alls that may be used to cite the nursing home if there is a bad outcome.

Common causes for nursing home citations include resident falls and other accidents, pressure ulcers or wounds, dehydration, weight loss, and uncontrolled pain. In addition, because nursing homes are surveyed much more frequently than hospices (including an annual survey and complaint surveys), nursing homes are more likely to be cited for non-compliance than hospices. Facilities are also obligated to self-report many incidents, which can lead to additional complaint surveys and citations.

### **Costs of Non-Compliance**

If a hospice receives a survey citation, in most cases it will be able to correct the non-compliance without incurring further penalties from CMS. In contrast, nursing homes face a variety of penalties for survey citations, including federal civil monetary penalties (ranging from \$50 - \$10,000 per day or per incident), denial of payment for new Medicare/Medicaid admissions, the loss of the ability to host nurse aide training, and state fines. Citations can also affect a nursing home's "Star Rating" on Medicare's Nursing Home Compare website and other consumer reports.

The same events that may lead to survey citations can serve as the basis for personal injury or wrongful death lawsuits against the nursing home, some of which have led to tremendous awards for the plaintiffs. As a result of these high-liability risks, nursing homes in some markets find it difficult to obtain affordable liability insurance.

### **Building Successful Collaborations**

Understanding and appreciating the nursing home's world allows hospices to identify areas where they can contribute to improved quality of care. There is no "one size fits all" approach to nursing home relationships, and hospices will want to develop individualized approaches by eliciting feedback from the facility. However, the following are some general considerations for beginning these conversations and building successful nursing home collaborations.

### **Understand Nursing Home Obligations**

Although hospices do not need to become experts on nursing home obligations, having a basic understanding of common citations and regulatory requirements may help the hospice identify why a nursing home is taking a particular approach to a patient care issue, as well as identify opportunities for improved collaboration. For example, in response to citations for pressure ulcers, some facilities might adopt a broad policy requiring the use of pressure-reducing mattresses for all residents at risk for skin breakdown. By understanding why the facility has adopted a particular strategy, hospices can be more effective in approaching the issue and discussing individualized alternatives.

### **Keep Up to Date with Nursing Home Issues**

CMS frequently issues updates to the Interpretative Guidelines, and some of these updates may provide opportunities for hospices to start a conversation with nursing homes about how they can better coordinate their care. For example, CMS revised the Interpretative Guidelines (F309) last year to provide guidelines for pain management and also create specific guidance for reviewing nursing home residents who receive hospice care (paralleling many of the requirements set forth in 42 CFR §418.112 of the Hospice CoPs). Under these guidelines, nursing home surveyors are instructed to evaluate whether:

- 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 facility should not experience any lack of facility services or personal care because of his/her status as a hospice patient);
- The facility 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).

These guidelines can provide a starting point for discussing how the hospice and nursing home can improve their collaboration to jointly meet their regulatory obligations.

### ***Go Beyond Pain Management***

Nursing homes generally recognize that hospices provide valuable assistance in managing pain, but hospices may not be significantly involved in helping assess and care for other problems the resident experiences, such

**Nursing homes face a variety of penalties for survey citations, including monetary penalties**



as behaviors associated with terminal dementia, nutrition and hydration issues, incontinence, pressure ulcers, or falls, even though these problems may be related to the terminal illness. These problems are frequent causes for nursing home survey citations and are important areas for hospices to provide input.

### ***Demonstrate Responsiveness and Reliability***

A hospice's failure to respond promptly to a patient's change in condition can put the nursing home in jeopardy of violating its own regulatory obligations. Promptly responding to large and small issues, beginning with initiating care planning and coordination following admission, will establish that the hospice is a committed partner and available to help solve problems.

### ***Understand What Works for the Facility***

By understanding and working with a facility's schedule, a hospice can help ensure that hospice visits will allow time for real coordination with the facility (e.g., avoiding scheduled visits during the facility's medication pass). Facilities may also have individual preferences for communicating with the hospice. For example, some may prefer written documentation in a book, while others might prefer that verbal reports be given to a particular staff member.

### ***Utilize Hospice Staff Who Understand Nursing Home Issues***

Hospice staff with long-term care backgrounds can help bridge potential gaps in understanding between the hospice world and the nursing home world. In addition, hospice staff can become educated about nursing home issues through involvement with nursing home associations or attending other training opportunities. Hospices should also consider whether they can use consistent personnel at a particular facility. Consistent personnel can help establish working relationships with facility staff, in addition to the improved ability to assess changes in a patient's condition.

Hospices can build successful collaborations with nursing homes by showing that they add value through their understanding, professionalism, and ability to solve problems—and successful collaboration leads to improved care for patients and stronger, more lasting relationships with nursing home partners. ▽

*Meg S.L. Pekarske is co-chair of the Hospice & Palliative Care Practice Group at the law firm of Reinhart Boerner Van Deuren s.c. She has extensive experience in advising both hospice and long-term care clients on regulatory and contracting issues. She can be reached at 608-229-2216 or mpekarske@reinhartlaw.com.*

### **References:**

- <sup>1</sup> Office of Inspector General, "Medicare Hospice Care for Beneficiaries in Nursing Facilities: Compliance With Medicare Coverage Requirements," OEI-02-06-00221, available at <http://oig.hhs.gov/oei/reports/oei-02-06-00221.pdf>.
- <sup>2</sup> See 42 C.F.R. §483.25 and the associated guidance at F309 in the State Operations Manual, CMS Pub. No. 100-07, Appendix PP (the "Interpretative Guidelines"), available at [http://cms.gov/manuals/Downloads/som107ap\\_pp\\_guidelines\\_ltcf.pdf](http://cms.gov/manuals/Downloads/som107ap_pp_guidelines_ltcf.pdf).
- <sup>3</sup> A determination that decline was unavoidable can only be made if all of the following factors are present: (1) an accurate and complete assessment; (2) a care plan that is implemented consistently and based on information from the assessment; and (3) evaluation of the results of the interventions and revising the interventions as necessary. See F309 in the Interpretative Guidelines.
- <sup>4</sup> See F323 in the Interpretative Guidelines.

