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## HOSPICE AND PALLIATIVE CARE PRACTICE GROUP

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### **HOSPICE CONTRACTING FOR THE PROVISION OF GENERAL INPATIENT CARE**

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A hospice has several important considerations to make when entering into arrangements with a hospital or skilled nursing facility for the provision of general inpatient care for hospice patients. This article will lay out the requirements contained in the Medicare Conditions of Participation ("CoPs") and the federal anti-kickback statute that must be complied with when entering into a written agreement between a hospice and a facility for the provision of general inpatient care to its patients.

General inpatient care is defined as short-term pain control or acute or chronic symptom management provided either by the hospice in its own inpatient facility or through an agreement with a hospital or long term care facility (when such care cannot be provided in the hospice setting). When a hospice does not have the ability to provide general inpatient care in its own inpatient facility, the hospice must contract with a facility that meets all of the following requirements found in the CoPs:

- The facility must participate in the Medicare or Medicaid program;
- The facility must provide 24-hour nursing services sufficient to meet total nursing needs and are in accordance with the patient's plan of care;
- The facility must be designed for the comfort and privacy of each hospice patient and his or her family, including

physical space for private patient and family visiting, accommodations for family members to remain with the patient throughout the night, accommodations for family privacy after a patient's death, and décor which is homelike in design and function; and

- The facility must allow patients to receive visitors at any hour, including children.

The CoPs require that the hospice have a legally-binding written agreement for the provision of any arranged services. This written agreement must include the following:

- Identification of the specific services to be provided and the party responsible for the implementation of the provisions under the agreement;
- The services may only be provided with the express authorization of the hospice;
- A description of the manner in which the services are to be coordinated, supervised and evaluated by the hospice;
- The delineation of the roles of the hospice and the inpatient provider in the admission process, patient/family assessment, and the interdisciplinary group care conferences;
- A requirement that documentation must be kept showing that services are provided in accordance with the agreement;
- Minimum qualifications for the personnel providing the services;
- A requirement that the hospice will furnish to the inpatient provider a copy of the patient's plan of care and specific inpatient services to be furnished;
- The inpatient provider has established policies consistent with those of the hospice and agrees to abide by patient care protocols established by the hospice for its patients;
- That the medical record for each patient include a record of all inpatient services and events; and
- A requirement that a copy of the discharge summary and, if requested, a copy of the medical record for each hospice patient must be provided to the hospice.

Additionally, as part of its overall corporate compliance plan, the hospice should ensure that the arrangement with the general inpatient provider does not violate the Federal anti-kickback statute, which makes it a criminal offense to knowingly or willfully offer, pay, solicit or receive remuneration to induce or reward referrals of items or services payable by a Federal health care program. The statute contains a safe harbor for personal services and management contracts, and if structured properly, a hospice agreement with a facility for the provision of general inpatient care could fall under this safe harbor. Full compliance with this safe harbor would immunize the arrangement from prosecution under the statute. The safe harbor requires all of the following for such an arrangement:

- The arrangement must be set forth in a written agreement;
- The agreement must cover all services to be provided by the contracting parties;
- If the agreement is intended to provide for services on a periodic or part-time basis, the agreement must specify exactly the schedule of such intervals of service, and the exact charge for such intervals;
- The agreement must be for a term of at least one year;
- The aggregate compensation under the agreement must be set out in advance, consistent with fair market value in an arms-length transaction and not determined in a manner that takes into account the volume or value of any referrals or other business otherwise generated between the parties for which payment may be made under any Federal health care program;
- The services performed under the agreement do not involve the counseling or promotion of a business arrangement in violation of the law; and
- The aggregate services contracted for do not exceed those which are reasonably necessary to accomplish the business purpose of the services.

For hospices that do not have the facilities to provide general inpatient care for their patients, an arrangement with a hospital or long term care facility for the provision of such care is essential. A well-drafted agreement between the hospice and the facility, incorporating the requirements of the CoPs and in compliance with the personal services and management contracts safe harbor under the anti-kickback statute, is an important component in ensuring that an arrangement for the provision of general inpatient care complies with federal law.

Reinhart Boerner Van Deuren's Hospice and Palliative Care Practice Group serves hospices across the country in a variety of areas, including: regulatory compliance; survey and certification; accreditation; licensing; HIPAA; caregiver misconduct investigations; due diligence, mergers and acquisitions and other corporate matters; labor and employment; criminal and civil investigations by state or federal government agencies; litigation; contracts and daily operational issues.



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