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Free Care; Charity Care – Recent OIG Guidance on Hospital Discounts of Importance to Hospices

On February 19, 2004, the Office of the Inspector General published a document regarding discounts provided by hospitals for uninsured patients who cannot afford to pay their hospital bills, and reductions or waivers of Medicare cost sharing amounts by hospitals for patients experiencing financial hardship. In that document entitled "Hospital Discounts Offered to Patients Who Cannot Afford to Pay Their Hospital Bills," the OIG made it clear that "hospitals have the ability to provide relief to uninsured and underinsured patients who cannot afford their hospital bills."

This guidance is very relevant to hospices committed to providing care regardless of ability to pay. Sometimes, however, this commitment is translated into a policy on the part of the hospice never to charge patients. In the OIG's most current guidance, the OIG made it clear once again that the federal anti-kickback statute prohibits providers from giving or receiving anything of value in exchange for referrals of business payable by Medicare or Medicaid. However, the anti-kickback statute does not prohibit discounts to uninsured patients who are unable to pay their medical bills for financial reasons.

The following points in the document are of importance to hospices:

1. Discounts for uninsured patients who cannot afford to pay their bills are permissible.
2. While the Social Security Act allows the OIG to exclude from participation in federal health care programs, any provider who submits bills substantially more than the provider's or supplier's usual charges, the OIG does not include in its calculation of "usual charges" free or substantially reduced charges to those who do not have the ability to pay.
3. Health care providers are not permitted to routinely charge Medicare or Medicaid substantially more than they usually charge others.
4. Providers may waive co-insurance or deductibles in cases of financial hardship if:
   - The waiver is not connected with an advertisement or solicitation.
   - The provider does not routinely waive co-insurance or deductible

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amounts, and
- The provider waives the co-insurance or deductible amounts after a good faith determination that the patient is in financial need or that reasonable collection efforts have failed.

In this document, the OIG recognized that a good faith determination of financial need may vary depending on the circumstances and that providers should have flexibility in taking these circumstances into account. The document listed the following examples:

- a patient's income, assets and expenses;
- a patient's family size;
- the scope and extent of the patient's medical bills; and
- the local cost of living.

The document is helpful to hospices attempting to implement a reasonable approach to the provision of charity care in the form of a sliding scale fee schedule. It states that it is important to use a "reasonable set of financial need guidelines that are based on objective criteria and appropriate for the applicable locality. The guidelines should be applied uniformly in all cases . . . we do believe it is appropriate to apply inflated income guidelines that result in waivers for beneficiaries who are not in genuine financial need." The OIG document goes on to state that "We are aware that in some situations, patients may be reluctant or unable to provide documentation of their financial status. In those cases, hospitals may be able to use other reasonable methods for determining financial need, including, for example, documented patient interviews or questionnaires."

What this means for hospices is that providing free care or reduced fees for care is clearly permissible and should be encouraged as part of the hospice's mission to serve the entire community, regardless of ability to pay. However, it is another reminder that it is important to implement reasonable guidelines for determining financial need.

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