

Compliance Risks in Home Health

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Introduction

- I. What is the Government looking for?
 - A. Accept patients appropriately for home
 - care;
 - B. Assess the patient's condition and code(HHRG);
 - C. Render services; and
 - D. Bill the payor

- II. Know your risk areas
 - A. Diversified agency
 - B. Integrity Agreement
 - C. Recent merger or acquisition
 - D. Referral relationships
 - E. Vendor relationships; joint ventures
 - F. Subcontracted caregivers
 - G. Marketing arrangements and personnel

- III. Minimize your risk
 - A. Corporate Compliance Program
 - 1.Policies and procedures
 - 2.Code of conduct
 - 3.Confidential disclosure program
 - 4.Training and education
 - 5.Screening
 - 6.Internal audit for clinical and billing compliance
 - 7.Disciplinary guidelines

– B. Legal review

- 1. Attorney review of referral arrangements and joint ventures
- 2. Attorney review of provider agreements

Risk Areas Identified Under PPS

- I. Selection of a Home Health Resource Group (HHRG) (push toward high volume agencies)
 - A. Upcoding-placing patients in higher case mix categories than they warrant;
 - B. Manipulation of billing codes
 - C. MO825 designation without sufficient therapy visits
 - D. Specific coding errors

specific coding errors (cont.)

- 1. Mismatch between 485 and OASIS;
- 2. Wound, ulcer or surgical detail missing;
- 3. Diagnosis inconsistent, unspecified, or unsupported by OASIS severity rating;
- 4. Onset or exacerbation date missing;
- 5. V-codes or surgical procedures improperly listed as primary diagnosis;
- 6. Eliminated, suspected or probable diagnosis listed as primary.

E. Coding inconsistencies

- 1. Clinical/financial inconsistencies in charting patient condition/progress;
- 2. Dr.'s orders for PT or OT services and few or none provided; code omitted;
- 3. Charting entries inconsistent with code;
- 4. No evidence of homebound status in charting.

- II. Recertification
 - A. Evidence of genuine medical necessity upon recert;
 - B. Reassessment of patient;
 - C. Timing;
 - D. Charting/documentation consistent with original plan of treatment or change in condition.

Traditional Risk Areas in Home Health

- I. Marketing
 - A. Potentially all marketing arrangements could violate anti-kickback statutes unless a safe harbor applies;
 - B. "White coat" marketing--
 - 1. Position of trust
 - 2. Opportunity to exercise undue influence
 - C. Incentive payments to personnel
 - D. NO gifts
 - 1. De minimis
 - 2. Reporting

- II. Anti-kickback Laws
- A. Remuneration in exchange for patient referrals
 - 1. Examine the source of the referral
 - 2. Intent to exercise influence
- B. Parallel state statutes
- C. Violations carry civil/criminal penalties; exclusion from federally funded programs
- D. Safe harbors

- E. Examples
 - 1. Space rentals without need or FMV
 - 2. Community programs (free physicals, shots, screenings for patients; educational programs and CECs)
 - 3. Supply contract discounts without a safe harbor (high volume; prompt payment; or commercially reasonable)
 - 4. Liaisons and home care coordinators

- 5. Adult Living Facilities
 - a) Subcontracts (quid pro quo use of personnel)
 - b) Homebound status
 - c) Duplication of services
 - d) Liaisons; timing of care coordination
 - e) Free services
 - f) Space rental

Adult Living Facilities (cont.)

- g. Review contract or referral relationship
 - applicable state license
 - service agreement with resident
 - verify services provided

- III. Stark Law--Physician referrals
 - A. Prevents physician referrals for patients receiving federally funded services to agencies in which physician or member of immediate family has a financial interest
 - B. Legislative history
 - C. Direct or indirect ownership interest
 - D. Indirect interests and arrangements
 - E. Contracts as safe harbor

IV. Miscellaneous

- A. Alteration of Documentation
 - 1. Creation of assessment visit for recertification
 - 2. Amended care note
- B. Theft of time
 - 1. Failure to correct billing;
 - 2. Failure to notify state, programs, patients
 - 3. Signing care note for patient
- C. Failure to use available caregivers
- D. Abandonment

Old Risk Areas--New Twist

- I. False Claims Act
 - A. Anti-kickback laws
 - B. Stark Law
 - C. Quality of Care as a false claim
 - 1. Unqualified caregivers or poorly qualified
 - 2. Underutilization--too few services
 - 3. Early discharge--abandonment
 - D. Inadequate management/oversight of subcontractors

- II. Non-clinical billing errors
 - A. Improper MSA code
 - 1. Alters wage index factor
 - 2. Agency appears to be providing services from non-licensed geographic area
 - B. Overpayments and credit balances
 - C. Waivers of co-payments or coinsurance

Conclusion