### Table 8.C—Update Factors for Facility—Specific Portion of the SNF PPS Rates—Adjust to 12-Month Cost Reporting Periods Beginning on or After October 1, 1999 and Before October 1, 2000 From Cost Reporting Periods Beginning in FY 1995 (Base Year)

<table>
<thead>
<tr>
<th>If 12-month cost reporting period in initial period begins</th>
<th>Adjust from 12-month cost reporting period in base year that begins</th>
<th>Using update factor of</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 1, 1999</td>
<td>October 1, 1994</td>
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</tr>
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</tr>
<tr>
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</tr>
<tr>
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</tr>
<tr>
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<td>September 1, 1995</td>
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</tr>
</tbody>
</table>

1 Source: Standard & Poor’s DRI, 1st Qtr 1999; @USSIM/TREND25YR0299@CISSIM/CONTROL991

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**(DEPARTMENT OF HEALTH AND HUMAN SERVICES)**

**Health Resources and Services Administration**

**Notice of Filing of Annual Report of Federal Advisory Committee**

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration’s Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. Copies may be obtained from: Gontran Lamberty, Dr. P.H., Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3146.

**Dated:** September 23, 1999.

**Jane M. Harrison,**
Director, Division of Policy Review and Coordination.

([FR Doc. 99–25793 Filed 10–4–99; 8:45 am](https://www.federalregister.gov/documents/1999/10/04/99-25793))

**BILLING CODE 4160–15 P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Inspector General**

**Publication of the OIG Compliance Program, Guidance for Hospices**

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice.

**SUMMARY:** This Federal Register notice sets forth the recently issued Compliance Program Guidance for Hospices developed by the Office of Inspector General (OIG). The OIG has previously developed and published compliance program guidance focused on several other areas and aspects of the health care industry. We believe that the development and issuance of this compliance program guidance for hospices will continue to serve as a positive step toward promoting a higher level of ethical and lawful conduct throughout the entire health care industry.

**FOR FURTHER INFORMATION CONTACT:** Michael Shaw, Office of Counsel to the Inspector General, (202) 619–2078.

**SUPPLEMENTARY INFORMATION:**

**Background**

The creation of compliance program guidance remains a major initiative by the OIG in its efforts to engage the health care community in combating fraud and abuse. In formulating compliance guidance, the OIG has worked closely with the Health Care Financing Administration (HCFA), the Department of Justice (DOJ) and various sectors of the health care industry to provide clear guidance to those segments of the industry that are interested in reducing fraud and abuse within their organizations. The five previously-issued compliance program guidances were focused on the hospital industry; home health agencies; clinical laboratories; third-party medical billing companies; and the durable medical equipment, prosthetics, orthotics and supply industry. The development of these types of compliance program guidance is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

**Guidance for the Hospice Industry**

On January 13, 1999, the OIG published a solicitation notice (64 FR 2228) seeking information and recommendations for developing guidance for the hospice industry. In response to that solicitation notice, the OIG received numerous comments from various parts of the industry and from their representatives. After careful consideration of those initial comments, and in an effort to ensure that all parties had a reasonable opportunity to provide input into a final product, the OIG published draft guidance for the hospice industry on July 21, 1999 (64 FR 39150) for further comment and recommendations.

**Elements for an Effective Compliance Program**

Through experience, the OIG has identified seven fundamental elements...
to an effective compliance program. They are:

- Implementing written policies, procedures and standards of conduct;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Enforcing standards through well-publicized disciplinary guidelines;
- Conducting internal monitoring and auditing; and
- Responding promptly to detected offenses and developing corrective action.

Through application of these seven basic elements, the OIG is offering specific compliance measures that may be implemented in hospice industry operations in an effort to curtail or eliminate fraud and abuse. As with previously-issued OIG compliance guidances, adoption of the Compliance Program Guidance for Hospices set forth below will be strictly voluntary.

A reprint of this newly-issued compliance program guidance follows:

Office of Inspector General's Compliance Program Guidance for Hospices (September 1999)

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist hospices and their agents and subproviders (referred to collectively in this document as “hospices”) develop effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State, and private payor health plans. The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse and waste in these health care plans while at the same time further the fundamental mission of all hospices, which is to provide palliative care to patients.

Within this document, the OIG first provides its general views on the value and fundamental principles of hospice compliance programs, and then provides the specific elements that each hospice should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines to be considered by a hospice interested in implementing a compliance program.

The OIG recognizes the size differential that exists between operations of the different hospices and organizations that compose the hospice industry. Appropriately, this guidance is pertinent for all hospices, whether for-profit, non-profit, provider-based, independent, community-based, volunteer-based, large, small, urban or rural. The applicability of the recommendations and guidelines provided in this document depends on the circumstances of each particular hospice. However, regardless of a hospice’s size and structure, the OIG believes that every hospice can and should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures recommended within this guidance.

Fundamentally, compliance efforts are designed to establish a culture within a hospice that promotes prevention, detection, and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the hospice’s business policies. In practice, the compliance program should effectively articulate and demonstrate the organization’s commitment to ethical conduct. Compliance programs guide a hospice’s governing body (e.g., board of directors or trustees), chief executive officer (CEO), managers, physicians, clinicians, billing personnel, and other employees in the efficient management and operation of a hospice. Eventually, a compliance program should become part of the fabric of routine hospice operations.

It is incumbent upon a hospice’s corporate officers and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Employees, managers and the Government will focus on the words and actions of a hospice’s leadership as a measure of the organization’s commitment to compliance. Indeed, many hospices have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a hospice a further concrete method that may improve the appropriateness and quality of care and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations and other requirements.

Implementing an effective compliance program requires a substantial commitment of time, energy and resources by senior management and the hospice’s governing body.2 Superficial programs that simply purport to comply with the elements discussed and described in this guidance or programs that are hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could expose the hospice to greater liability than no program at all. While it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the OIG believes that the long-term benefits of implementing the program outweigh the costs.4

A. Benefits of Compliance Plan

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, strengthening operational quality, improving the quality of health care services and reducing the cost of health care. Attaining these goals provides positive results to hospices, the Government, and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payors, a hospice may gain numerous additional

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1 The term “hospice” is applied in this document as the term “hospice program” is defined in 42 U.S.C. 1395x(dd).
2 Palliative care is an intensive program of care that focuses on the relief of pain and suffering associated with a terminal illness. Through this emphasis on palliative rather than curative services, individuals have a choice whenever conventional approaches for medical treatment may no longer be appropriate. Hospice addresses the needs of terminally ill individuals by including the patient and family, specially trained volunteers, caregivers from the community, and representatives from

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3 Recent case law suggests that the failure of a corporate director to attempt in good faith to institute a compliance program in certain situations may be a breach of a director’s fiduciary obligation. See, e.g., In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Ch. Chanc. Del. 1996).
4 The conclusion of a recent report by the United States General Accounting Office (GAO) to Congress stated that “despite the investment of time and resources that compliance programs entail, many hospitals believe the benefits of these programs . . . outweigh their costs . . . and providers themselves believe that compliance programs can reduce improper Medicare payments.” See GAO report GAO/HEHS-99-59 (April 1999).
benefits by voluntarily implementing an effective compliance program. These benefits may include the ability to:

- formulate effective controls to assure compliance with Federal and State statutes, rules and regulations, and Federal, State and private payor health care program requirements and internal guidelines;
- concretely demonstrate to employees and the community at large the hospice’s strong commitment to honest and responsible provider and corporate conduct;
- identify and prevent illegal and unethical conduct;
- improve internal communication;
- more quickly and accurately react to employees’ operational compliance concerns and target resources to address those concerns;
- improve the quality, efficiency, and consistency of patient care;
- create a centralized source for distributing information on health care statutes, regulations, and other program directives regarding fraud, waste and abuse, and related issues;
- formulate a methodology that encourages employees to report potential problems;
- develop procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers, employees, independent contractors, consultants, volunteers, physicians, nurses and other health care professionals;
- initiate immediate, appropriate, and decisive corrective action; and
- minimize, through early detection and reporting, the loss to the Government from false claims, and thereby reduce the hospice’s exposure to civil damages and penalties, criminal sanctions and administrative remedies, such as program exclusion.\(^1\)

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a hospice. The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse and waste from the hospice system. However, a sincere effort by hospices to comply with applicable Federal and State standards, as well as the requirements of private health care programs, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

**B. Application of Compliance Program Guidance**

Given the diversity within the industry, there is no single “best” hospice compliance program. The OIG understands the variances and complexities within the hospice industry and is sensitive to the differences among national and regional multi-hospice organizations, small independent hospices and other types of hospice organizations and systems. However, elements of this guidance can be used by all hospices, regardless of size, location, or corporate structure, to establish an effective compliance program. Similarly, a hospital or corporation that owns a hospice or provides hospice services may incorporate these elements into its system-wide corporate compliance structure. We recognize that some hospices may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG’s suggestions on how a hospice can best establish internal controls and monitoring to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages a hospice to develop and implement compliance elements that uniquely address its own particular risk areas.

The OIG believes that input and support by the individuals and organizations that will use the tools set forth in this document are critical to the development and success of this compliance program guidance. In a continuing effort to collaborate closely with the private sector, the OIG placed a notice in the Federal Register soliciting recommendations and suggestions on what should be included in this Compliance Program Guidance, and then published draft Compliance Program Guidance for Hospices in the Federal Register for public comment.\(^6\) Further, we took into consideration previous OIG publications, such as Special Fraud Alerts, the recent findings and recommendations in reports issued by OIG’s Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations related to hospices conducted by OIG’s Office of Investigations and the Department of Justice. As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, rules, policies and procedures of the Federal, State and private health plans occur. The OIG recognizes that the development and implementation of compliance programs in hospices often raise sensitive and complex legal and managerial issues.\(^7\) However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes and regulations.

**II. Compliance Program Elements**

The elements proposed by these guidelines are similar to those of other compliance program guidances\(^8\) and the OIG’s corporate integrity agreements.\(^9\) The elements represent a guide that can be tailored to fit the needs and financial realities of a particular hospice. The OIG is cognizant that, with regard to compliance programs, one model is not suitable to every hospice.

The OIG believes that every effective compliance program must begin with a formal commitment to the hospice’s governing body to include all of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.\(^11\)

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\(^1\) The OIG, for example, will consider the existence of an effective compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. See 62 FR 67392 (December 24, 1997). The burden is on the provider to demonstrate the operational effectiveness of a compliance program.


\(^4\) Corporate integrity agreements are executed as part of a civil settlement between the health care provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance program guidance.

\(^5\) E.g., a resolution by the board of directors, owner(s) or president, where applicable, and the allocation of adequate resources to ensure that each of the elements is addressed.


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Further, we believe that every hospice can implement most of our recommended elements that expand upon these seven steps. We recognize that full implementation of all elements may not be immediately feasible for all hospices. However, as a first step, a good faith and meaningful commitment on the part of the hospice administration, especially the governing body and the CEO, will substantially contribute to a program’s successful implementation. As the compliance program is implemented, that commitment should cascade down through the management of the hospice to every employee at all levels in the organization.

At a minimum, comprehensive compliance programs should include the following seven elements:

1. Standards of Conduct
   Hospices should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the hospice’s senior management and its divisions, including affiliated providers operating under the hospice’s control and other health care professionals (e.g., hospice physicians, nurses, physical therapists, occupational therapists, social workers, spiritual counselors, bereavement counselors and volunteers). Standards should articulate the hospice’s commitment to comply with all Federal, State and private insurer standards, with an emphasis on preventing fraud and abuse. They should explicitly state the organization’s mission, goals and ethical requirements of compliance and reflect a carefully crafted, clear expression of expectations for all hospice governing body members, officers, managers, employees, physicians, clinicians and, where appropriate, volunteers, contractors and other agents. These standards should promote integrity, support objectivity, and foster trust. Standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and responsibly.

   The standards should be distributed to, and comprehensible by, all affected employees (e.g., translated into other languages when necessary and written at appropriate reading levels). Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified and/or clarified.

2. Written Policies and Procedures
   Every compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability to the hospice. These policies, standards and practices should be developed under the direction and supervision of, or subject to review by, the compliance officer and compliance committee and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospice’s agents and independent contractors.

3. The designation of a compliance officer and other appropriate bodies, e.g., a corporate compliance committee, charged with the responsibility for operating and monitoring the compliance program, and who report directly to the CEO and the governing body;

4. The creation and maintenance of a process, such as a hotline or other reporting system, to receive complaints and ensure effective lines of communication between the compliance officer and all employees, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation;

5. The use of audits and/or other evaluation techniques to monitor criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

1 The integral functions of a compliance officer and a corporate compliance committee in implementing an effective compliance program are discussed throughout this compliance program guidance. However, the OIG recognizes that a hospice may tailor the structure of those positions in consideration of the size and design of the hospice, while endeavoring to address and accomplish all of the underlying objectives of a compliance officer and a corporate compliance committee. See section II.B. and accompanying notes.

11 The term “Federal health care programs” is applied in this document as defined in 42 U.S.C. 1320a-7(f), which includes or Federal health care program requirements (see (i) employees who have violated internal compliance policies, applicable statutes, regulations or Federal health care program requirements and (ii) the employment of sanctioned and other specified individuals; and

12 The development of policies that direct prompt and proper responses to detected offenses, including the initiation of appropriate corrective action and preventative measures.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability to the hospice. These policies, standards and practices should be developed under the direction and supervision of, or subject to review by, the compliance officer and compliance committee and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospice’s agents and independent contractors.

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The standards should be distributed to, and comprehensible by, all affected employees (e.g., translated into other languages when necessary and written at appropriate reading levels). Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified and/or clarified.

17 The OIG recognizes that not all standards, policies, and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all affected employees’ training. The hospice must decide which additional educational programs should be limited to the different levels of employees, based on job functions and areas of responsibility.
When they first begin working for the hospice, and each time new standards of conduct are issued, employees should be asked to sign a statement certifying that they have received, read, and understood the standards of conduct. An employee’s certification should be retained by the hospice in the employee’s personnel file, and available for review by the compliance officer.

2. Risk Areas

The OIG believes that a hospice’s written policies and procedures should take into consideration the particular statutes, rules, and program instructions that apply to each function or department of the hospice. In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures that hospice staff should follow.

Consequently, we recommend that these policies and procedures be coordinated with the appropriate training and educational programs, with an emphasis on areas of special concern that have been identified by the OIG through its investigative and audit functions. Although the OIG concluded in a 1998 report that the Medicare hospice program seems to be working as intended, compliance programs for hospices should still address areas of OIG concern that include:

- Uninformed consent to elect the Medicare Hospice Benefit;
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- Admitting patients to hospice care who are not terminally ill;
- Arrangement with another health care provider who a hospice knows is submitting claims for services already covered by the Medicare Hospice Benefit;
- Under-utilization;
- False certification of terminal illness, or provides nursing, administrative, and other services for free or below fair market value to physicians, nursing homes, hospitals, patients, etc. That may violate the anti-kickback statute or other similar Federal or State statute or regulation.

resources in order to provide optimal care consistent with the needs of a patient, family and/or lawful representative. This may result in standard care. In addition, inadequate care culminates in an inpatient admission and also care provider who a hospice knows is submitting claims for services already covered by the Medicare Hospice Benefit.

The OIG believes that a hospice’s compliance program should require that the legal staff, compliance officer, or other appropriate personnel carefully consider any and all Special Fraud Alerts issued by the OIG that relate to hospice. Such employee participation in the development of the hospice’s compliance program can promote its credibility and foster employee acceptance of the program.

The OIG periodically issues Special Fraud Alerts setting forth activities believed to raise legal and enforcement issues. For example, see OIG Special Fraud Alert—"Fraud and Abuse in Nursing Home Arrangements with Hospices” (March 1998); see also OIG Medicare Advisory Bulletin on Hospice Benefits (November 1995). Hospice compliance programs should require that the legal staff, compliance officer, or other appropriate personnel carefully consider any and all Special Fraud Alerts issued by the OIG that relate to hospice. Such employee participation in the development of the hospice’s compliance program should address the ramifications of failing to cease and correct any conduct criticized in a Special Fraud Alert, if applicable to hospices, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a hospice should take the steps described in section II.G. regarding investigations, reporting, and correction of identified problems.

See OIG report OEI-04-93-00270—“Medicare Hospice Beneficiaries: Services and Eligibility.”

Hospices may also want to consult the OIG’s Work Plan when conducting the risk assessment. The OIG Work Plan details the various projects the OIG intends to address in the applicable fiscal year. It should be noted that the priorities in the Work Plan are subject to modification and revision as the year progresses and it does not represent a complete or final list of areas of concern to the OIG. The Work Plan is current on the Internet at http://www.dhhs.gov/progorg/oig.

A hospice must ensure that an individual (or authorized representative) is informed of the palliative nature of the care and services that may be provided if the individual desires to elect the Medicare Hospice Benefit. 42 CFR 418.62. The decision to elect the Medicare Hospice Benefit has significant consequences because the patient waives the right to receive standard Medicare benefits related to the terminal illness, including all treatment for the purposes of curing the terminal illness. See 42 U.S.C. 1395(d)(7). The patient’s hospice election statement must include the following items of information: (1) Identification of the particular hospice that will provide care to the individual; (2) the individual’s or representative’s acknowledgment that he or she has been given a full understanding of hospice care; (3) the individual’s or representative’s acknowledgment that he or she understands that certain Medicare services are waived by the election; (4) the effective date of the election; and (5) the signature of the individual or representative. See Medicare Hospice Manual § 211.2.

For a hospice patient to receive reimbursement for hospice services under Medicare, the patient must be “terminally ill.” See 42 U.S.C. 1395(d). An individual is considered terminally ill if the individual has a medical prognosis that the individual’s life expectancy is six months or less if the illness runs its normal course. 42 CFR 418.3. In March 1995, Operation Restore Trust (ORT), a joint initiative, was established between the OIG, HCFA, and Administration on Aging. Among its projects, ORT assessed the medical eligibility for hospice services in the form of a sample of Medicare spending (New York, Florida, Illinois, Texas and California). Through ORT activities, it was discovered that many beneficiaries receiving Medicare hospice benefits did not have a terminal illness as defined by Medicare. See OIG report A-05-96-0023—“Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.” See also section II.A.3.a. and accompanying notes.

When an individual makes an election to receive services covered by the Medicare Hospice Benefit, that individual wavers the right to receive Medicare reimbursement for any treatment related to his or her terminal illness. Accordingly, a hospice should ensure it is not involved with a health care provider who the hospice knows submits claims for services that are unlawful for the Medicare Hospice Benefit: (1) Standard Medicare benefits for treatment of the terminal illness; (2) treatment by another hospice not arranged for by the patient’s hospice; and (3) care from another provider that duplicates care the hospice is required to furnish. See 42 U.S.C. 1395d(f)(1)(B). It is expected that the hospice provider will work with other providers to coordinate care and ensure appropriate billing if these situations occur. Where a single episode of care culminates in an inpatient admission and also involves services by two different providers, the need for a clear record from both providers is critical.

In other words, knowing denial of needed care in order to keep costs low. A hospice is accountable for the appropriate allocation and utilization of its...
including improper arrangements with nursing homes.

- Overlap in the services that a nursing home provides, which results in insufficient care provided by a hospice to a nursing home resident;
- Improper relinquishment of core services and professional management responsibilities to nursing homes, volunteers and privately-paid professionals;
- Providing hospice services in a nursing home before a written agreement has been finalized, if required;

the intent to influence referrals. See 42 U.S.C. 1320a-7b; 60 FR 40847 (1995). See also discussion in section II.A.4. and accompanying notes. In addition, a hospice that offers an incentive to an individual that such hospice knows or should know is likely to influence the individual to use a particular hospice may be subject to civil money penalties. See 42 U.S.C. 1320a-7a(b).

The OIG has observed instances of potential kickbacks between hospices and nursing homes to unlawfully influence the referral of patients. In general, a hospice is a nursing home for “room and board” provided to a Medicaid hospice patient should not exceed what the nursing home otherwise would have received directly from Medicaid if the patient had not been enrolled in hospice. (If a patient receiving Medicare hospice benefits in a nursing home is also eligible for Medicaid, Medicaid will pay the hospice at least 95 percent of the State’s daily nursing home rate, and the hospice is then responsible for paying the nursing home for the patient’s room and board.) See Hospice Medicare Manual § 204.2. See also section II.A.4. and accompanying notes.

There may be some overlap in the services that the nursing homes and hospices provide, thereby providing one or the other the opportunity to reduce services and costs. Recent OIG reports found that residents of certain nursing homes receive fewer services from their hospice than patients who receive hospice services in their own homes. Upon review of hospice records for many nursing home patients, hospices were receiving only basic nursing and aide visits that were provided by hospice staff as part of room and board, and the care was not routine or terminal care, as provided by hospice staff, such as nursing and aide visits, were often clearly within the professional skills possessed by nursing home staff. The reports found that the nature of services provided by hospice staff, while appropriate and efficacious, appeared to differ little from services a nursing home would have provided if the patient was not enrolled in hospice. See OIG report O–05–96–00250—“Hospice Patients in Nursing Homes;” see also OIG report O–05–96–00023—“Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.”

If additions or corrections need to be made to medical records, hospices should make such entries according to standards of practice and applicable State law. For example, hospices might correct a medical record by drawing a single line through the erroneous entry, writing “error” next to the entry, initialing and dating the correction and writing the correct information in the entry. Inadequate management and oversight of subcontracted services, which results in improper billing. See OIG report A–05–96–00003—“Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.”

Medicare would otherwise cover. Marketing statements should not create the perception that the initial terminal prognosis is of limited importance and that hospice benefits and reimbursement are always provided over an indefinite time period. Marketing materials should prominently feature the eligibility requirements for the Medicare Hospice Benefit. An example of an improper review of patient records is when a hospice employs or hires the administration of a nursing facility to review patient records without the patient’s permission, solely to determine if the patients are eligible for hospice care and to solicit hospice referrals. Hospices should not review medical records of nursing home patients in an attempt to recruit patients for hospice services based on their eligibility. For instance, see OIG report A–05–96–00023—“Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments.”

Improper patient solicitation activities, such as “patient charting;”

- Inadequate management and oversight of subcontracted services, which results in improper billing.

Sales commissions based upon length of stay in hospice;

Deficient coordination of volunteers;

Improper indication of the location where hospice services were delivered;

Medicare would otherwise cover. Marketing statements should not create the perception that the initial terminal prognosis is of limited importance and that hospice benefits and reimbursement are always provided over an indefinite time period. Marketing materials should prominently feature the eligibility requirements for the Medicare Hospice Benefit.

Improper patient solicitation activities, such as “patient charting;”

- Inadequate management and oversight of subcontracted services, which results in improper billing.

Sales commissions based upon length of stay in hospice;

Deficient coordination of volunteers;

Improper indication of the location where hospice services were delivered;
• Failure to comply with applicable requirements for verbal orders for hospice services; 44
• Non-response to late hospice referrals by physicians; 45
• Knowing misuse of provider certification numbers, which results in improper billing; 46
• Failure to adhere to hospice licensing requirements and Medicare conditions of participation; 47 and
• Knowing failure to return overpayments made by Federal health care programs. 48 A hospice’s prior history of noncompliance with applicable statutes, regulations and Federal health care program requirements may indicate additional types of risk areas where the hospice may be vulnerable and that may require policies and procedures to prevent recurrence. 49 Additional risk areas should be assessed by hospices as well as incorporated into the written policies and procedures and training elements developed as part of their compliance programs.

3. Eligibility Requirements

Of the risk areas identified above, those pertaining to the Medicare eligibility requirements have been the frequent subject of investigations and audits. With respect to the reimbursement process, a hospice’s written policies and procedures should reflect and reinforce Federal health care requirements regarding the eligibility for Medicare reimbursement. The policies must create a mechanism for the billing or reimbursement staff to communicate effectively and accurately with the clinical staff. Policies and procedures should:

• Provide for complete and timely documentation of the specific clinical factors that qualify a patient for the Medicare Hospice Benefit; 50
• Delinate who has authority to make entries in the patient record;
• Emphasize that patients should be admitted to hospice care only when applicable documentation supports the applicable reimbursement eligibility criteria and only when such documentation is maintained, appropriately organized in a legible form, and available for audit and review.

The documentation should record the activity leading to the record entry and the identity of the individual providing the service. Documentation should be consistent and any discrepancies discussed and reconciled. The hospice should consult with its physicians, clinical staff and/or governing body to establish other appropriate documentation guidelines;
• Indicate that the diagnosis and procedure codes for hospice services reported on the reimbursement claim should be based on the patient’s clinical condition as reflected in the medical record and other documentation, and should comply with all applicable official coding rules and guidelines.

Any Health Care Financing Administration Common Procedure Coding System (HCPCS), International Classification of Disease (ICD), or revenue code (or successor codes) used by the billing staff should accurately describe the service that was ordered by the physician and performed by the hospice. The documentation necessary for accurate billing should be available to billing staff; and
• Provide that the compensation for hospice admission personnel, billing department personnel and billing consultants should not offer any financial incentive to bill for hospice care regardless of whether applicable eligibility criteria for reimbursement is met.

The written policies and procedures concerning proper billing should reflect the current reimbursement principles set forth in applicable regulations and should be developed in tandem with private payor and regulatory standards. Particular attention should be paid to issues associated with patient election of the Medicare Hospice Benefit, certification of terminal illness of a patient, development and certification of a patient’s interdisciplinary plan of care and responsibility and necessity of the level of hospice care provided. 51

a. Terminal Illness as an Eligibility Requirement. For a hospice patient to receive reimbursement for hospice services under Medicare, 52 the patient must be “terminally ill.” 53 Hospices should create oversight mechanisms to ensure that the terminal illness of a Medicare beneficiary is verified 54 and

44 Hospice staff must make an appropriate entry in the patient’s record as soon as they receive a verbal certification of terminal illness and file written certifications in the medical record. See 42 CFR 418.22(d). State regulations may require that verbal certifications from physicians that should only be accepted by individuals authorized by State law to accept such orders. The OIG recommends that those authorized individuals accepting verbal and telephonic orders should record, date and sign these orders and the physician(s) who ordered the service or treatment should countersign them no later than the time period required by State regulations.
45 We have received comments expressing concern over late hospice referrals by physicians. While the onus of a timely hospice referral may be placed on hospices, physicians, clinical staff and/or physicians, hospices may have inequitable access to patients at the costliest stage of terminal illness, and quality of care may be affected because of patients being too far along to receive the benefits of hospice care. Hospices need to work closely with physicians to receive the optimum benefits of hospice care. When hospice referrals are late, terminally ill patients may be unnecessarily denied access to the Medicare Hospice Benefit, hospices may have inequitable access to patients at the costliest stage of terminal illness, and quality of care may be affected because of patients being too far along to receive the benefits of hospice care.
46 Hospices need to work closely with physicians to educate and remind them as to the sensitivities and risks associated with untimely referrals. The OIG supports appropriate efforts to increase access to hospice care for eligible individuals.
47 E.g., transfer of a patient from one hospice to another hospice owned by the same company to circumvent applicable reimbursement caps.
48 See 42 CFR 418.50–418.100 for the Medicare conditions of participation that apply to hospices.
49 An overpayment is the amount of money a hospice may have received in excess of the amount due and payable under a health care program. Examples of overpayments include, but are not limited to, instances where a hospice is: (1) Paid twice for the same service or treatment should countersign them no later than the time period required by State regulations.
50 Each patient’s clinical record must contain: (1) The initial and subsequent assessments (including appropriate documentation guidelines;
51 a. Terminal Illness as an Eligibility Requirement. For a hospice patient to receive reimbursement for hospice services under Medicare, the patient must be “terminally ill.” Hospices should create oversight mechanisms to ensure that the terminal illness of a Medicare beneficiary is verified and
52 42 U.S.C. 1395d(a) authorizes the reimbursement of hospice care.
53 An individual is considered to be “terminally ill” if the individual has a medical prognosis that the individual’s life expectancy is six months or less if the illness runs its normal course. 42 CFR 418.3. However, the fact that a hospice patient lives beyond this six month period, in and of itself, does not constitute grounds for a determination that the patient was never eligible for hospice care, or that the services provided to the patient were not reimbursable by Medicare.
54 Medical reviews, audits, inspections, and investigations of hospices have concluded that hospices have billed Medicare for hospice services provided to patients who are not terminally ill. For instance, see OIG report OEI–04–93–00270—“Medicare Hospice Beneficiaries: Services and Eligibility.” Through Operation Restore Trust activities and the increased program integrity actions by the Regional Home Health Intermediaries (RHHIs), it was discovered that many beneficiaries receiving Medicare hospice benefits did not have a
Continued
the specific factors qualifying the patient as terminally ill are properly documented.55 Any determinative assessment of the terminal illness of a Medicare beneficiary should be completed prior to billing Medicare for hospice care. Physicians must certify that the beneficiary was terminally ill at the time when a patient was admitted for hospice services as well as at the beginning of subsequent hospice benefit periods.56

The hospice’s written policies and procedures should require, at a minimum, that:

• Before a patient is admitted for hospice services, the hospice physician and attending physician thoroughly review and certify the admitting diagnosis and prognosis;
• A patient’s medical record contain complete documentation to support the certification made by the hospice physician or attending physician;57
• The patient or lawful representative is informed of the determination of the patient’s life limiting condition;
• The patient or lawful representative is aware that the goal of hospice is directed toward relief of symptoms, rather than the cure of the underlying disease;
• A patient’s medical condition and status is sufficiently reviewed during Interdisciplinary Group meetings; and
• The clinical progression/status of a patient’s disease and medical condition are properly documented.

Hospices can further ensure compliance with the terminal illness requirement through discussions with Medicare beneficiaries and their families, reminding them that they must satisfy the regulatory requirements for terminal illness status to be eligible for Medicare coverage. These discussions can take place at the beginning of hospice election and during appropriate times throughout a patient’s hospice care, e.g., at time of recertification. Because the Medicare conditions of participation require hospices to give all beneficiaries an informed consent form that outlines their legal rights before furnishing them with hospice care,58 providers can include reminders of terminal illness requirements in these forms.

The OIG recognizes that decisions to admit patients to hospices are often not based on medical factors alone. Such decisions are routinely influenced by non-medical factors that would generally be reflected in the plan of care. However, it is important to make a distinction between admitting a patient to a hospice program and certifying a patient for the Medicare Hospice Benefit. Based on an individual hospice’s admission criteria, some patients may be admitted to hospice care prior to an estimated six months before death, as long as the hospice is paid fair market value for its services. Regardless, patients can be certified for the Medicare Hospice Benefit only when it is reasonable to conclude that a patient’s life expectancy is six months or less if the illness runs its normal course. In other cases, alternative modes of reimbursement, often provided through community support, should be sought outside the Medicare Hospice Benefit.

b. Plan of Care. A hospice should take all reasonable steps to ensure that a written plan of care is established and maintained for each individual who receives hospice services, and that the care provided to that individual is in accordance with the plan.59 The plan must be established by the patient’s attending physician, the hospice physician, and the Interdisciplinary Group.60 Each patient’s needs should be continuously assessed and all treatment options explored and evaluated in the context of the patient’s symptoms.61

The hospice’s written policies and procedures should require, at a minimum, that:

• Before the hospice bills for hospice care provided to a patient, the plan of care must be established by the hospice physician and the Interdisciplinary Group;62
• The plan of care includes: (i) An assessment of the hospice patient’s needs and identification of services, including the management of discomfort and symptom relief, and (ii) the scope and frequency of services, in detail, needed to meet the patient’s and family’s needs;63
• The plan of care must be reviewed and updated, at intervals specified in the plan, by the attending physician, hospice physician and the Interdisciplinary Group;64
• The hospice properly documents any review or update of a hospice patient’s plan of care by the attending physician, the hospice physician and Interdisciplinary Group; and65
• The hospice regularly reviews the appropriateness of Interdisciplinary Group services and level of services being provided, patient admission to hospice, patient length of stay delays and specific treatment modalities.

c. Utilization of Hospice Services. A hospice is accountable for the appropriate allocation and utilization of its resources in order to provide optimal care consistent with patient and family needs.66 Accordingly, a hospice should monitor and evaluate its resource allocation regularly to identify and resolve problems with the utilization of services, facilities and personnel. To achieve such monitoring, a hospice should schedule Interdisciplinary Group case reviews and conferences.67

For Medicare reimbursement purposes, the services of the hospice medical director(s) or the physician member of the Hospice Interdisciplinary Group must be performed by a doctor of medicine or osteopathy. See 42 CFR 418.202. The hospice should employ reasonable measures to verify that physicians who establish the hospice plan are appropriately licensed and no adverse actions, such as criminal conviction, debarment or an exclusion, have been taken against them.68

64 See 42 CFR 418.58(c).
66 Once a Medicare beneficiary elects hospice care, the hospice is responsible for furnishing directly, or arranging for, all supplies and services that relate to the beneficiary’s terminal condition, except the services of an attending physician. Hospice beneficiaries have the right to receive covered medical, social and emotional support services from the hospice directly, or through arrangements made by the hospice, and should not be forced to seek or pay for such care from non-hospice providers.
67 Interdisciplinary Group conferences are regularly scheduled periodic meetings of the Interdisciplinary Group to review the most current patient/family assessment, evaluate needs and update the plan of care.
Because HCFA establishes different payment amounts for specific categories of covered hospice care, a hospice must ensure that it provides for services to hospice patients that are reasonable and necessary. Otherwise, the hospice may be reimbursed for a higher level of services than was necessary, e.g., a hospice that provides and bills for continuous care where only routine home care is necessary.

As a preliminary matter, the OIG recognizes that licensed health care professional’s must be able to order any services that are appropriate for the care of their patients. However, Medicare and other Government and private health care plans will only pay for those services otherwise covered that meet appropriate standards (i.e., in the case of Medicare, “reasonable and necessary” services). Providers may not bill for services that do not meet the applicable standards. The hospice is in a unique position to deliver this information to the health care professionals on its staff and to the physicians who certify hospice services. Upon request, a hospice must be able to provide documentation, such as physician orders and other patient medical records, to support the level of services provided to a hospice patient.

The compliance officer should ensure that a clear, comprehensive summary of the definitions for the different levels of hospice care and applicable rules of the various Government and private plans is prepared, disseminated, and explained to appropriate hospice personnel.

We recommend that hospices formulate policies and procedures that include periodic clinical reviews, both prior and subsequent to billing for services, as a means of verifying that patients are receiving only reasonable and necessary services. As part of such reviews, hospices should examine the level, frequency, and duration of the services they perform to determine, in consultation with a physician, whether patients’ medical conditions justify the level of services provided and billed. A hospice may choose to incorporate this clinical review function into pre-existing quality assurance mechanisms or any other quality assurance processes that are part of its conditions of participation.

e. Services Provided to Hospice Patients in Nursing Homes. Hospice services may be appropriate and beneficial to terminally ill nursing home residents who wish to receive palliative care. However, the OIG has found hospices that enroll nursing home patients in hospice care are particularly vulnerable to fraud and abuse. Appropriately, a hospice should set sufficient oversight controls in place to ensure that care it provides to nursing home residents is appropriate, complete, and in accordance with applicable laws and Federal health care program requirements.

When a resident of a nursing home elects the Medicare Hospice Benefit, the hospice and the nursing home should jointly establish a coordinated plan of care that reflects the hospice philosophy and is based on an assessment of the individual’s needs and unique living situation in the nursing home. The coordinated plan should identify the care and services that the nursing home will provide to be responsive to the unique needs of the patient/resident and his or her expressed desire for hospice care.

In general, a hospice should involve nursing home personnel in assisting with the administration of a patient’s prescribed therapies included in the plan of care only to the extent that the hospice would routinely utilize the services of a hospice patient’s family/caregiver in implementing the plan of care. To satisfy the applicable Medicare conditions of participation in the nursing home context, hospices should implement policies and procedures to ensure that:

- The hospice makes all covered services available to meet the needs of a patient and does not routinely discharges patients in need of costly inpatient care; The hospice makes all covered services available to meet the needs of a patient and does not routinely discharges patients in need of costly inpatient care;
The hospice retains professional responsibility for services (e.g., personal care, nursing, medication for relieving pain control) furnished by nursing home staff. All care furnished by a nursing home related to the terminal illness or related conditions is in accordance with the hospice plan of care. The hospice and the nursing home communicate with each other when any changes are indicated to the plan of care, and each provider is aware of the other's respective activities in implementing the plan of care and complete those respective functions.

Evidence of the coordinated plan of care is present in the clinical records of both providers. Substantially all the core services are routinely provided directly by hospice employees and the hospice does not rely on employees of the inpatient facility to furnish needed nursing, physician, counseling, or medical social services. The hospice keeps its forms and documentation of services separate from the nursing home's forms and documentation.

4. Anti-Kickback and Self-Referral Concerns

The hospice should have policies and procedures in place with respect to compliance with Federal and State anti-kickback statutes and other applicable laws. Such policies should provide:

- All of the hospice's contracts and arrangements with actual or potential referral sources are reviewed carefully for compliance with all applicable statutes and regulations;
- The hospice does not submit or cause to be submitted to the Federal health care programs claims for patients who were referred to the hospice pursuant to contracts or financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation; and
- The hospice does not offer or provide gifts, free services, or other incentives to patients, relatives of patients, physicians, nursing facilities, hospitals, contractors or other potential referral sources for the purpose of inducing referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation.

In particular, arrangements between nursing homes and hospices are vulnerable to fraud and abuse because nursing home operators have control over the specific hospice or hospices they will permit to provide hospice services to their residents. Moreover, hospice patients residing in nursing homes may be particularly desirable from a hospice's financial standpoint. Therefore, with respect to arrangements with nursing homes, a hospice should develop policies and procedures to prevent the following practices from occurring, which may constitute potential kickbacks:

- Hospice offering free or below fair market value goods to induce a nursing home to refer patients to the hospice;
- Hospice paying "room and board" payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicare had the patient not been enrolled in hospice;
- Hospice paying above fair market value for "additional" non-core services that Medicare does not consider to be included in its "room and board" payments to the nursing home.

5. Retention of Records

Hospice compliance programs should provide for the implementation of a records system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval and destruction of documents. The two categories of documents developed under this system should include: (1) all records and documentation (e.g., medical records, and billing and claims documentation) required either by Federal or State law for participation in Federal health care programs or any other applicable Federal and State laws and regulations (e.g., document retention requirements to maintain State licensure); and (2) all records necessary to protect the integrity of the hospice's compliance process and confirm the effectiveness of the program.

The second category includes: (1) Documentation that employees were adequately trained; (2) reports from the hospice's hotline, including the nature and results of any investigation that was conducted; (3) documentation of corrective action, including disciplinary action taken and policy improvements introduced, in response to any internal investigation or audit; (4) modifications...
to the compliance program; (5) self-disclosures; and (6) the results of the hospice’s auditing and monitoring efforts.\textsuperscript{95}

6. Compliance as an Element of a Performance Plan

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees, who should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors should:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements pertinent to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the hospice will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, a compliance program should include a policy for sanctioning managers and supervisors who fail to adequately instruct their subordinates or fail to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations and given the hospice the opportunity to correct them earlier.

The OIG believes all hospices should ensure that its employees understand the importance of compliance. If a small hospice does not have a formal performance evaluation structure, it should informally convey the employee’s compliance responsibilities and the importance of these responsibilities in a written job description or orientation checklist. The applicable documentation should include a dated signature, with an indication that the employee has received it and will be responsible for adherence to the responsibilities expressed.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every hospice should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual’s sole duty or added to other management responsibilities, depending upon the size and resources of the hospice and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the hospice with direct access to the hospice’s president or CEO, governing body, all other senior management, and legal counsel.\textsuperscript{96} The officer should have sufficient funding and staff to perform his or her responsibilities fully.

Coordination and communication are the key functions of the compliance officer with regard to planning, implementing and monitoring the compliance program.

The compliance officer’s primary responsibilities should include:

- Overseeing and monitoring the implementation of the compliance program;\textsuperscript{97}
- Reporting on a regular basis to the hospice’s governing body, CEO and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the hospice’s efficiency and quality of services, and to reduce the hospice’s vulnerability to fraud, abuse and waste;
- Periodically revising the program in light of changes in the organization’s needs, and in the law and policies and procedures of Government and private payor health plans;
- Reviewing employees’ certifications that they have received, read and understood the standards of conduct;
- Developing, coordinating and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all relevant employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
- Ensuring that independent contractors and agents who furnish physician, nursing, or other health care services to the clients of the hospice, or billing services to the hospice and are aware of the requirements of the hospice’s compliance program with respect to eligibility, billing and marketing, among other things;
- Coordinating personnel issues with the hospice’s Human Resources/Personnel office (or its equivalent) to ensure that: (i) The National Practitioner Data Bank\textsuperscript{98} has been checked with respect to all medical staff and independent contractors (as appropriate) and (ii) the List of Excluded Individuals/Entities\textsuperscript{99} has been checked with respect to all employees, medical staff and independent contractors (as appropriate);\textsuperscript{100}

- Assisting the hospice’s financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action (e.g., making necessary improvements to hospice policies and practices, taking appropriate disciplinary action, etc.) with all hospice departments, subcontracted providers and health care professionals under the hospice’s control, and any other agents if appropriate; and

- Continuing the momentum of the compliance program and the accomplishment of its objectives long

\textsuperscript{95} The OIG believes that it is not advisable for the compliance function to be subordinate to the hospice’s general counsel, or comptroller or similar hospice financial officer. Free-standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution’s compliance efforts and activities. By separating the function from the key management positions of general counsel or chief financial officer (where the size and structure of the hospice make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

\textsuperscript{96} The National Practitioner Data Bank is a database that contains information about medical malpractice payments, sanctions by boards of medical examiners or State licensing boards, adverse clinical privilege actions and adverse professional society membership actions. Health care entities can have access to this database to seek information about their own medical or clinical staff, as well as prospective employees or physician contractors.

\textsuperscript{97} The List of Excluded Individuals/Entities is an OIG-produced report available on the Internet at http://www.dhhs.gov/progorg/oig. It is updated on a regular basis to reflect the status of health care providers who have been excluded from participation in the Medicare and Medicaid programs. In addition, the General Services Administration maintains a monthly listing of debarred contractors on the Internet at http://www.armer.gov/epis.

\textsuperscript{98} The compliance officer may also have to ensure that the criminal backgrounds of employees have been checked depending upon State requirements or hospice policy. See note 131.
after the initial years of implementation.\footnote{Periodic on-site visits of hospice operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse, and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the hospice’s commitment to its policies and principles.}

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient medical records, billing records, and records concerning the marketing efforts of the facility and the hospice’s arrangements with other parties, including employees, physicians, professionals on staff, relevant independent contractors, suppliers, agents, and supplemental staffing entities. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute and other legal or regulatory requirements.

A small hospice may not have the need or the resources to hire or appoint a full time compliance officer. However, each hospice should have a person in its organization (this person may have other functional responsibilities) who can oversee the hospice’s compliance with applicable statutes, rules, regulations, and policies. The structure and comprehensiveness of the hospice’s compliance program will help determine the responsibilities of each individual compliance officer.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.\footnote{The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, and clinical management (e.g., hospice physician), as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to hospice policies and procedures as recommended by the committee.}

When developing an appropriate team of people to serve as the hospice’s compliance committee, including the compliance officer, a hospice should consider a variety of skills and personality traits that are expected from those in such positions.\footnote{A health care provider should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the hospice and having significant professional experience working with billing, clinical records, documentation, and auditing principles. Once a hospice chooses the people that will accept the responsibilities vested in members of the compliance committee, the hospice needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties. The committee’s functions should include:

- Analyzing the legal requirements with which it must comply, and specific risk areas;
- Assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;
- Working with appropriate hospice departments to develop standards of conduct and policies and procedures to promote compliance with legal and ethical requirements;
- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization’s standards, policies, and procedures as part of its daily operations;
- Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;}

The committee's functions should include:

- Developing a system to solicit, evaluate, and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the hospice, and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall hospice operating structure and daily routine.

The compliance committee is an extension of the compliance officer and provides the organization with increased oversight. The OIG recognizes that small hospices may not have the resources or the need to establish a compliance committee. However, when potential problems are identified, the OIG recommends the small hospices to develop a "taskforce," if appropriate, to address the problem. The members of the taskforce may vary depending upon the issue.

C. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, employees, volunteers, nurses, physicians, and other health care professionals, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. As part of their compliance programs, hospices should require personnel to attend specific training on a periodic basis, including appropriate training in Federal and State statutes, regulations, and guidelines, and the policies of private payors, and training in corporate ethics, which emphasizes the organization’s commitment to compliance with these legal requirements and policies.\footnote{Specific compliance training should complement any “inservice” training sessions that a hospice may regularly schedule to provide an ongoing program for the training of employees as required by its conditions of participation. 42 CFR 418.64.}

The training programs should include sessions highlighting the organization’s compliance program, summarizing fraud and abuse laws, Federal health care program requirements, claim development and submission processes, patient rights, and marketing practices that reflect current legal and program standards. The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors, and other significant agents, e.g., by requiring participation in training programs and disseminating publications that explain specific requirements in a practical manner.\footnote{Some publications, such as OIG’s Special Fraud Alerts, audit and inspection reports, and advisory opinions, as well as the annual OIG work plan, are readily available from the OIG and could be the basis for standards, educational courses, and programs for appropriate hospice employees.}

Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training.\footnote{Certain positions, such as those that involve the billing of hospice services or patient admission to hospice care, create a greater organizational legal exposure, and therefore require specialized training.} Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and experienced enough in the issue presented to adequately field questions and coordinate discussions among those being trained. New employees should be trained early in their employment.\footnote{Other health care professionals, and the corporate officers, managers, employees, volunteers, nurses, physicians, and other significant agents, e.g., by requiring participation in training programs and disseminating publications that explain specific requirements in a practical manner.}
Training programs and materials should be designed to take into account the skills, experience, and knowledge of the individual trainees. The compliance officer should document any formal training undertaken by the hospice as part of the compliance program. A variety of teaching methods, such as interactive training, and training in several different languages, particularly where a hospice has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable of the institution's standards of conduct and procedures for alerting senior management to problems and concerns. In addition to specific training in the risk areas identified in section II.A.2, above, primary training for appropriate corporate officers, managers, and other hospice staff should include such topics as: Government and private payor reimbursement principles; General prohibitions on paying or receiving remuneration to induce referrals; Improper alterations to clinical records; Providing hospice services with proper authorization; Patient rights and patient education; Compliance with Medicare conditions of participation; and Duty to report misconduct.

Clariﬁying and emphasizing these areas of concern through training and educational programs are particularly relevant to a hospice's marketing and ﬁnancial personnel, in that the pressure to meet business goals may render these employees vulnerable to engaging in prohibited practices.

The OIG suggests that all relevant levels of personnel be made part of various educational and training programs of the hospice. Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities. For example, for certain employees involved in the hospice admission functions, periodic training in applicable reimbursement coverage and eligibility requirements should be required. In hospices with high employee turnover, periodic training updates are critical.

The OIG recognizes that the format of the training program will vary depending upon the resources of the hospice. For example, a small hospice may want to create a video for each type of training session so new employees can receive training in a timely manner.

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee. The hospice should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

D. Developing Effective Lines of Communication

1. Access to the Compliance Ofﬁcer

An open line of communication between the compliance ofﬁcer and hospice employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse, and waste. Written conﬁdentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud.

The OIG encourages the use of hotlines, e-mails, written memoranda, newsletters, suggestion boxes, and other forms of information exchange to maintain these open lines of communication. If the hospice establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, possibly by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas. Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, Federal health care program requirements, regulations, or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance ofﬁcer that records such investigations.

Post-training tests can be used to assess the success of training provided and employee comprehension of the hospice's policies and procedures.

This practice involves the hospice altering the attending physician's or other authorized physician's diagnosis in order to receive reimbursement for hospice care. A hospice should not claim the patient has a particular medical condition in order to qualify for reimbursement for which it would not otherwise qualify.

In addition, where feasible, the OIG recommends that a hospice afford outside contractors the opportunity to participate in the hospice's training and educational programs, or develop their own programs that complement the hospice's standards of conduct, compliance requirements, and other rules and practices.
calls, including the nature of any investigation and its results. Such information should be included in reports to the governing body, the CEO, and the compliance committee. Further, while the hospice should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed in certain instances.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

The OIG recognizes that protecting anonymity may be infeasible for small hospices. However, the OIG believes all hospice employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know to whom to turn for attention and should be able to do so without fear of retribution.

E. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes that an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior hospice or corporate officers.

Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the hospice's senior management and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and the risk factors that a particular hospice confronts.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations, and Federal health care program requirements. The audits should focus on the hospice's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to Government enforcement actions. At a minimum, these audits should be designed to address the hospice's compliance with laws governing kickback arrangements, claim development and submission, reimbursement, eligibility, and marketing. The audits and reviews should inquire into the hospice's compliance with the Medicare conditions of participation and the specific rules and policies that have been the focus of particular attention on the part of the Medicare fiscal intermediaries or carriers, and law enforcement, as evidenced by educational and other communications from OIG Special Fraud Alerts, OIG audits and evaluations, and law enforcement's initiatives.

In addition, the hospice should focus on any areas of concern that are specific to the individual hospice and have been identified by any entity, whether Federal, State or internal.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variances from established baseline. Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer and hospice management may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the hospice should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor, with appropriate documentation and a sufficiently detailed explanation of the reason for the refund.

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs, and disciplinary actions, among other elements. This process will verify actual conformance by all departments with the compliance program and may identify the necessity for improvements to be made to the compliance program, as well as the hospice's operations. Such reviews could support a determination that appropriate records have been created and maintained to document the implementation of an effective program. However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, proper modifications must be implemented.

Such evaluations, when developed with the support of management, can help ensure compliance with the hospice's policies and procedures. As part of the review process, the compliance officer or reviewers should consider techniques such as:

- Visits and interviews of patients at their residences;
- Analysis of utilization patterns;
- Testing clinical and hospice administration staff on their knowledge of reimbursement coverage criteria (e.g., present hypothetical scenarios of situations experienced in daily practice and assess responses);
- Assessment of existing relationships with physicians, nursing homes, hospitals, and other potential referral sources;
- Unannounced mock audits and investigations;

To efficiently and accurately fulfill such an obligation, the hospice should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the internal investigative methods utilized, the results of the investigation, the corrective action implemented, the disciplinary measures imposed, and any identified overpayments and monies returned.

Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

Even when a hospice or group of hospices is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual hospice must be a key feature in any annual review. A proper review on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.
• Reevaluation of deficiencies cited in past surveys for Medicare conditions of participation;
• Examination of hospice complaint logs;
• Checking personnel records to determine whether any individuals who have been reprimanded for compliance issues in the past are among those currently engaged in improper conduct;
• Questionnaires developed to solicit impressions of a broad cross-section of the hospice’s employees and staff;
• Evaluation of the timeliness of physician referrals and physician signatures for hospice certifications;
• Reviews of clinical documentation (e.g., terminal illness certification, plan of care, nursing notes, etc.), financial records, and other source documents that support claims for reimbursement;
• Validation of qualifications of hospice physicians and other hospice staff, including verification of applicable state license renewals;
• Evaluation of written materials and documentation outlining the hospice’s policies and procedures; and
• Trend analyses, or longitudinal studies, that uncover deviations, positive or negative, in specific areas over a given period.

The reviewers should:
• Have the qualifications and experience necessary to adequately identify potential issues with the subject matter that is reviewed;
• Be objective and independent of line management to the extent reasonably possible;¹²⁷
• Have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;
• Present written evaluative reports on compliance activities to the CEO, governing body, and members of the compliance committee on a regular basis, but no less often than annually; and
• Specifically identify areas where corrective actions are needed.

Just as a hospice is required by its conditions of participation to conduct “an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of care provided,”¹²⁸ the OIG believes that a hospice should monitor its compliance with the Federal health care program requirements in the same fashion. Furthermore, just as a hospice is required by its conditions of participation to use its quality assurance findings to correct identified problems and revise hospice policies if necessary to improve patient care,¹²⁹ the OIG believes that a hospice’s management should take whatever steps are necessary to correct identified compliance problems and prevent them from recurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

While conducting its monitoring and auditing efforts, as well as its daily operations, a hospice should document its efforts to comply with applicable statutes, regulations, and Federal health care program requirements. For example, where a hospice, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the hospice should document and retain a record of the request and any written or oral response. This step is extremely important if the hospice intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the hospice and third parties will help the organization document its attempts at compliance. In addition, the hospice agency should maintain records relevant to the issue of whether its reliance was “reasonable” and whether it exercised due diligence in developing procedures and practices to implement the advice.

The extent of a hospice’s audit should depend on the hospice’s identified risk areas and resources. If the hospice comes under Government scrutiny in the future, the Government will assess whether or not the hospice developed a comprehensive audit based upon identified risk areas and resources. If the Government determines the hospice failed to develop an adequate audit program, given its resources, the Government will be less likely to afford the hospice favorable treatment under the Federal Sentencing Guidelines.

F. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Discipline Policy and Actions

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, employees, and other health care professionals who have failed to comply with the hospice’s standards of conduct, policies and procedures, Federal health care program requirements, or Federal and State laws, or those who have otherwise engaged in wrongdoing, which have the potential to impair the hospice’s status as a reliable, honest, and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, employees, physicians, and other health care professionals for failing to comply with the hospice’s standards and policies and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination, or financial penalties, as appropriate. Each situation must be considered on a case-by-case basis to determine the appropriate sanction. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department or agency managers, while others may have to be resolved by a senior hospice administrator. Disciplinary action may be appropriate where a responsible employee’s failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the hospice that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate officers and other hospice employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be potentially subject to the same types of disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a hospice. The OIG believes that corporate officers, managers, supervisors, clinical staff, and other health care professionals should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.
2. New Employee Policy

For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, hospices should conduct a reasonable and prudent background investigation, including a reference check, as part of every employment application. The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a-7(i), or exclusion action. Pursuant to the compliance program, hospice policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or that are listed as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that an individual who is the subject of such actions should be removed from direct responsibility for or involvement in any Federal health care program. That individual’s salary should not be paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds.

With regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, the hospice should terminate its employment or other contract arrangement with the individual or contractor.

130 See note 99.

131 States may mandate, and many hospices voluntarily conduct, criminal background checks for prospective employees of hospice. Identification of a criminal background of an applicant, who may have been recently convicted of serious crimes that relate to the proposed employment duties, could be grounds for denying employment. Further, criminal background screening may deter those individuals with criminal intent from entering the field of hospice.

132 Because providers of hospice care have frequent, relatively unsupervised access to potentially vulnerable people and their property, a hospice should also scrutinize whether it should employ individuals who have been convicted of crimes of neglect, violence, theft or dishonesty, or financial misconduct.

133 Likewise, hospice compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded or otherwise ineligible for participation in Federal health care programs. See note 99.

134 Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. Violations and Investigations

Violations of a hospice’s compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a hospice’s status as a reliable, honest and trustworthy provider capable of participating in Federal health care programs. Detected but uncorrected misconduct can seriously endanger the mission, reputation and legal status of the hospice. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the conduct in question to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take corrective steps to correct the problem.

As appropriate, such steps may include an immediate referral to criminal or human resources authorities, a corrective action plan, a report to the Government and the return of any overpayments, if applicable.

Where potential fraud or False Claims Act liability is not involved, the OIG recommends that normal repayment channels should be used for returning overpayments to the Government as they are discovered. However, even if the overpayment detection and return process is working and is being monitored by the hospice’s audit or billing divisions, the OIG still believes that the compliance officer needs to be made aware of these overpayments, violations or deviations that may reveal trends or patterns indicative of a systemic problem.

Instances of noncompliance must be determined on a case-by-case basis. The existence, or amount, of a monetary loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries. Additionally, where services required by a plan of care were not provided.

Advice from the hospice’s in-house counsel or an outside law firm may be sought to determine the extent of the hospice’s liability and to plan the appropriate course of action.

The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected violations. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG’s website at http://www.oig.hhs.gov/programs/oig

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Some hospices should consider engaging outside counsel, auditors or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the hospice and the situation, hospices should strive for some consistency by utilizing sound practices and disciplinary protocols.

Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the hospice is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the hospice determines that disciplinary action is warranted, it should be prompt and imposed in accordance with the hospice’s written standards of disciplinary action.

2. Reporting

If the compliance officer, compliance committee, or management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to

135 The parameters of a claim review subject to an internal investigation will depend on the circumstances surrounding the issue(s) identified. By limiting the scope of an internal audit to current billing, a hospice may fail to discover major problems and deficiencies in operations, as well as be subject to certain liability.

136 See note 99.

137 States may mandate, and many hospices voluntarily conduct, criminal background checks for prospective employees of hospices.
believe that the misconduct may violate criminal, civil, or administrative law, then the hospice should promptly report the existence of misconduct to the appropriate Federal and State authorities139 within a reasonable period, but not more than 60 days140 after determining that there is credible evidence of a violation.141 Prompt reporting will demonstrate the hospice's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments and exclusion), if the reporting provider becomes the target of an OIG investigation.142

When reporting misconduct to the Government, a hospice should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil or administrative violations have occurred, the appropriate Federal and State authorities143 should be notified immediately.

As previously stated, the hospice should take appropriate corrective action, including prompt identification of any overpayment to the affected payor and the imposition of proper disciplinary action. If potential fraud or violations of the False Claims Act are involved, any repayment of the overpayment should be made as part of the discussion with the Government following a report of the matter to law enforcement authorities. Otherwise, normal repayment channels should be used for repaying identified overpayments.144 Failure to disclose overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for an independent violation with respect to the hospice, as well as any individuals who may have been involved.145 For this reason, hospice compliance programs should emphasize that overpayments obtained from Medicare or other Federal health care programs should be promptly disclosed and returned to the payor that made the erroneous payment.

The OIG believes all hospices, regardless of size, should ensure they are reporting the results of any overpayments or violations to the appropriate entity and taking the appropriate corrective action to remedy the identified deficiency.

III. Assessing the Effectiveness of a Compliance Program

Because the Government views the existence of a compliance program as a mitigating factor when determining culpability regarding allegations of fraud and abuse only if the compliance program is "effective," how a hospice may assess its compliance program becomes quite significant. A hospice, as well as any other type of health care provider, should consider the attributes of each individual element of its compliance program to assess the program's "effectiveness" as a whole. Examining the comprehensiveness of policies and procedures implemented to satisfy these elements is merely the first step. Evaluating how a compliance program performs during a provider's day-to-day operations becomes the critical indicator.146

As previously stated, a compliance program should require the development and distribution of written compliance policies, standards and practices that identify specific areas of risk and vulnerability to a hospice. One way to judge whether these policies, standards and practices measure up is to observe how an organization's employees react to them. Do employees consistently experience recurring pitfalls because they lack guidance on certain critical issues not adequately covered in company policies? Are employees flagrantly disobeying an organization's standards of conduct because they observe no sincere buy-in from senior management? Do employees have trouble understanding policies and procedures because they are written in legal jargon or presented in difficult reading levels?

Does an organization routinely experience systematic billing failures because employees are ill-instructed on how to implement written policies and procedures? Written compliance policies, standards and practices are only as good as an organization's commitment to apply them in practice.

Every hospice should designate a compliance officer or contact to serve as the focal point of compliance activities, and, if appropriate, a compliance committee to advise and assist the compliance officer. An organization needs to seriously consider whoever fills such integral roles and periodically monitor how the individuals chosen satisfy their responsibilities. Does a compliance officer have sufficient professional experience working with billing, clinical records, documentation, and auditing principles to perform assigned responsibilities fully? Has a compliance officer or compliance committee been negligent in ensuring an organization's compliance due to inadequate funding, staff, and authority necessary to carry out their jobs? Did

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139 Appropriate Federal and State authorities include the Office of Inspector General of the Department of Health and Human Services, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Federal Bureau of Investigation and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, and the Office of Personnel Management.

140 In contrast, to qualify for the "not less than double damages" provision of the False Claims Act, the report must be provided to the Government within 30 days after the date when the hospice first obtained the information. 31 U.S.C. 3729(a).

141 The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneously with, commencing an internal investigation, e.g., if the conduct: (1) is a clear violation of civil fraud or criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the need to correct the failure.

142 The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392 (December 24, 1997).

143 For this reason, hospice compliance programs should be promptly disclosed and returned to the payor that made the erroneous payment.

144 The hospice should report the overpayment to the Government, including the internal investigative process with the Government and any other actions taken.

145 Failure to disclose overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for an independent violation with respect to the hospice, as well as any individuals who may have been involved.

146 For this reason, hospice compliance programs should emphasize that overpayments obtained from Medicare or other Federal health care programs should be promptly disclosed and returned to the payor that made the erroneous payment.

147 The OIG believes all hospices, regardless of size, should ensure they are reporting the results of any overpayments or violations to the appropriate entity and taking the appropriate corrective action to remedy the identified deficiency.

148 See note 139.

149 A hospice should consult with its Medicare fiscal intermediary or HCFA for any further guidance regarding normal repayment channels. The hospice's Medicare fiscal intermediary or HCFA may require certain information (e.g., alleged violator name or location, overpayment amount, etc.) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual. Interest will be assessed, when appropriate. See 42 CFR 405.376.

145 See 42 U.S.C. 1320a–7(b)(3).

146 Evaluation may be accomplished through techniques such as employee surveys, management assessments and periodic review of benchmarks established for audits, investigations, disciplinary action, overpayments and employee feedback. All elements of an organization’s compliance program can be evaluated, including policies, training, practices and compliance personnel.
adding the compliance officer function to a key management position with other significant duties. This compromise the goals of the compliance program (e.g., chief financial officer who discounts certain overpayments identified to improve the company's bottom line profits)? Since a compliance officer and a compliance committee can potentially have a significant impact on how effectively a compliance program is implemented, those functions should not be taken for granted.

As evidenced throughout this guidance, the proper education and training of corporate officers, managers, health care professionals and other applicable employees of a provider, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. Accordingly, such efforts should be routinely evaluated. Are employees trained frequently enough? Do employees fail post-training tests that evaluate knowledge of compliance? Do training sessions and materials adequately summarize important aspects of the organization's compliance program, such as fraud and abuse laws, Federal health care program requirements, and claim development and submission processes? Are training instructors qualified to present the subject matter and experienced enough to duly field questions? When thorough compliance training is periodically conducted, employees receive the reinforcement they need to ensure an effective compliance program.

An open line of communication between the compliance officer and a provider's employees is equally important to the success of a compliance program. In today's intensive regulatory environment, the OIG believes that a provider cannot possibly have an effective compliance program if it receives minimal or no feedback from its employees regarding compliance matters. For instance, if a compliance officer does not receive appropriate inquiries from employees: Do policies and procedures fail to adequately guide employees to whom and when they should be communicating compliance matters? Do employees fear retaliation if they report misconduct? Are employee reporting issues not related to compliance through the wrong channels? Do employees have bad-faith, ulterior motives for reporting? Regardless of the means that a provider employs, whether it be telephone hotline, email, or suggestion boxes, employees should seek clarification from compliance staff in the event of any confusion or question dealing with compliance policies, practices or procedures.

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, health care professionals and other employees who have failed to adhere to an organization's standards of conduct, Federal health care program requirements or Federal or State laws. The number and caliber of disciplinary actions taken by an organization can be insightful. Have appropriate sanctions been applied to compliance misconduct? Are sanctions applied to all employees consistently, regardless of an employee's level in the corporate hierarchy? Have double-standards in discipline bred cynicism among employees? When disciplinary action is not taken seriously or applied haphazardly, such practices reflect poorly on senior management's commitment to foster compliance as well as the effectiveness of an organization's compliance program in general.

Another critical component of a successful compliance program is an ongoing monitoring and auditing process. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and risk factors of a particular hospice. The hallmark of effective monitoring and auditing efforts is how an organization determines the parameters of its reviews. Do audits focus on all pertinent departments of an organization? Does an audit cover compliance with all applicable laws and Federal health care program requirements? Are results of past audits, pre-established baselines or prior deficiencies reevaluated? Are the elements of the compliance program monitored? Are auditing techniques valid and conducted by objective reviewers? The extent and sincerity of an organization's efforts to confirm its compliance often proves to be a revealing determinant of a compliance program's effectiveness.

As was expressed in the last section of this guidance, it is essential that the compliance officer or other management officials immediately investigate reports or reasonable indications of suspected noncompliance. If a material violation of applicable law or compliance program requirements has occurred, a provider must take decisive steps to correct the problem. Providers who do not thoroughly investigate misconduct leave themselves open to undiscovered fraud, waste and abuse. When a provider learns of certain issues, does it knowingly disregard associated legal exposure? Is there a consistent and methodical approach to the correlation between compliance issues identified and the corrective action necessary to remedy? Are isolated overpayment matters properly resolved through normal repayment channels? Is credible evidence of misconduct that may violate criminal, civil or administrative law promptly reported to the appropriate Federal and State authorities? If any steps in this process of responding to detected offenses is circumvented or improperly handled; such conduct would most likely demonstrate an ineffective compliance program, as well as potentially result in criminal, civil or administrative liability.

Documentation is the key to demonstrating the effectiveness of a provider's compliance program. For example, documentation of the following should be maintained: audit results; logs of hotline calls and their resolution; corrective actions plans; due diligence efforts regarding business transactions; records of employee training, including the number of training hours; disciplinary actions and modification and distribution of policies and procedures. Given that the OIG is encouraging self-disclosure of overpayments and billing irregularities, maintaining a record of disclosures and refunds to the health care programs is strongly endorsed. A documented practice of refunding of overpayments and self-disclosing incidents of non-compliance with Federal health care program requirements can serve as evidence of a meaningful compliance effort by a hospice.

Hospices, as well as all health care providers, should acknowledge that it is their responsibility to formulate policies, procedures, and practices that are tailored to their own operations, and that are comprehensive enough to ensure compliance with all applicable Federal health care program requirements. An organization is in the best position to validate the suitability of its compliance efforts based upon its own particular circumstances.

IV. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient hospice compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual hospice, depending upon its particular corporate structure, mission and organizational structure. The statutes, regulations and guidelines of the Federal and State health insurance
programs, as well as the policies and procedures of the private health plans, should be integrated into every hospice’s compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and spends about a trillion dollars annually, is constantly evolving. The time is right for hospices to implement a strong voluntary health care compliance program. As stated throughout this guidance, compliance is a dynamic process that helps to ensure that hospices and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is OIG’s hope that a voluntarily created compliance program will enable hospices to meet their goals, improve the quality of patient care, and substantially reduce fraud, waste and abuse, as well as the cost of health care to Federal, State and private health insurers.


June Gibbs Brown,
Inspector General.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development

Meeting of the National Reading Panel

Notice is hereby given of the Washington DC area meeting of the National Reading Panel. The meeting will be held on Wednesday, October 13, 1999, from 8 am to 6 pm and on Thursday, October 14, 1999 from 8 am to 6 pm. The meeting location is the Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland, 20814. The entire meeting will be open to the public.

The National Reading Panel was requested by Congress and created by the Director of the National Institute of Child Health and Human Development in consultation with the Secretary of Education. The Panel will study the effectiveness of various approaches to teaching children how to read and report on the best ways to apply these findings in classrooms and at home. Its members include prominent reading researchers, teachers, child development experts, leaders in elementary and higher education, and parents. The Chair of the Panel is Dr. Donald N. Langenberg, Chancellor of the University System of Maryland.

The Panel will build on the findings presented by the National Research Council’s Committee on the Prevention of Reading Difficulties in Young Children. Based on these findings and the National Reading Panel’s own review of the literature, the Panel will: Determine the readiness for application in the classroom of the results of these research studies; identify appropriate means to rapidly disseminate this information to facilitate effective reading instruction in the schools; and identify gaps in the knowledge base for reading instruction and the best ways to close these gaps.

The agenda for this meeting will include presentations of subgroup reports and discussions of the reports by The National Reading Panel. A period of time will be set aside at approximately 3 pm on Thursday, October 14 for members of the public to address the Panel and express their views regarding the Panel’s mission. Individuals desiring an opportunity to speak before the Panel should address their requests to F. William Dommel, Jr., J.D., Executive Director, National Reading Panel, c/o Mr. Patrick Riccards and either mail them to the Widmeyer-Baker Group, 1825 Connecticut Avenue, NW, Fifth Floor, Washington, DC 20009, or email them to patrickr@wbg.com, or fax them to 202–667–0902. Requests for addressing the Panel should be received by October 11, 1999. Panel business permitting, each public speaker will be allowed five minutes to present his or her views. In the event of a large number of public speakers, the Panel Chair retains the option to further limit the presentation time allowed to each. Although the time permitted for oral presentations will be brief, the full text of all written comments submitted to the Panel will be made available to the Panel members for consideration.

For further information contact Mr. Patrick Riccards at 202–667–0901. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Patrick Riccards by October 11, 1999.


Yvonne Maddox,
Deputy Director, National Institute of Child Health and Human Development.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrewn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory’s certification is totally suspended or revoked, the laboratory will be omitted from updated listings until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fisher Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SPECIAL NOTE: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, “Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,” sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an