

## OIG Shifts its Focus to Hospice Marketing Materials and Relationships with Nursing Homes

On October 5, 2011, in its 2012 work plan, the OIG announced that it will begin scrutinizing hospice marketing practices and financial relationships with nursing facilities. The OIG will focus its review on hospices that treat a high percentage of beneficiaries in nursing homes.

As background for this investigation, the OIG discovered that some providers are aggressively marketing hospice services to long term care patients, but providers are placing little to no emphasis on the terminal illness eligibility requirement. A 2009 [OIG report](#) determined that 82% of hospice claims for patients in nursing facilities did not meet Medicare coverage requirements. One explanation for this finding is that hospice and nursing facilities are entering into inappropriate enrollment and compensation arrangements. In the coming year, the OIG will investigate this claim further by scrutinizing marketing materials and arrangements with nursing homes.

It is well known that Medicare providers face a challenge to develop compliant marketing materials which provide a competitive edge. Medicare providers are prohibited from engaging in many lawful marketing practices. When developing marketing materials targeted at patients, hospices should make sure their pieces are clear, informative, and truthful. Marketing materials should provide accurate information about the hospice benefit and prominently feature the eligibility requirements, including the terminal illness requirement. Hospices should refrain from using prohibited or inappropriate conduct (e.g. free gifts or services to patients or providers) to induce patients to elect for hospice care. Before the OIG begins its investigation, hospices should review their marketing material to determine whether they provide truthful and complete information about the hospice benefit. Failure to create compliant marketing pieces could result in an overpayment determination, civil monetary penalties, or criminal enforcement.

Nelson Hardiman regularly counsels hospice providers on innovative marketing solutions that comply with hospice marketing regulations. Nelson Hardiman also reviews hospice relationships with nursing homes and other Medicare providers.