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March 8, 1999

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To: Hospice Providers  
Nursing Facility Providers

Re: Hospice Provider Letter 99-01 -- Medicaid Fraud and Recipient Rights in Nursing Facilities

The Texas Department of Human Services (TDHS) recently received Regional Survey and Certification Letter No. 98-10 from the Health Care Financing Administration (HCFA) on specific hospice and nursing facility practices that are suspect for Medicaid fraud. The department has enclosed the HCFA interpretation for your information. This TDHS provider letter clarifies these HCFA issues plus other issues in the Texas Hospice Program and Nursing Home Program. Hospice and nursing facility providers must comply with the following to avoid Medicaid fraud and to guarantee the resident rights of the Medicaid hospice recipient.

**MEDICAID FRAUD**

1. A hospice cannot offer free goods or goods at below fair market value to induce a nursing home to refer patients to the hospice.
2. A hospice cannot pay Aroom and board@ payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicaid had the patient not been enrolled in hospice.
3. A hospice cannot pay amounts to the nursing home for Aadditional@ services that Medicaid considers to be included in its room and board payment to the hospice.
4. A hospice cannot pay above fair market value for Aadditional@ non-core services which Medicaid does not consider to be included in its payment to the hospice.
5. A hospice cannot refer its patients to a nursing home to induce the nursing home to refer its patients to the hospice.
6. A hospice cannot provide free (or below fair market value) care to nursing home patients, for whom the nursing home is receiving Medicare payment under the skilled nursing facility benefit, with the expectation that after the patient exhausts the skilled nursing facility benefit, the patient will receive hospice services from the hospice.
7. A hospice cannot provide staff at its expense to the nursing home to perform duties that otherwise would be performed by the nursing home.
8. The hospice cannot pay and the nursing facility cannot receive Aup-front@ payments at the first of the month for all Medicaid Hospice recipients before care is provided.

9. The hospice cannot pay part of the salary for a physician's assistant in order to influence that physician to use a particular hospice to the detriment of other hospice providers.
10. The hospice cannot give to the nursing facility after the recipient dies, and the nursing facility cannot receive, any supplies and equipment that the hospice purchased for use by the Medicaid hospice recipient.
11. The hospice cannot pay and the nursing facility or its staff cannot receive any meals, evenings out, vacations, or any other special favors as an inducement to the nursing facility staff for referring hospice patients to the hospice.

### **HOSPICE RECIPIENT RIGHTS**

1. Nursing facilities cannot allow hospices to review nursing facility resident records or records of hospice recipients under the care of another hospice, in order to determine who might be appropriate for hospice, or to take hospice recipients away from other hospice providers.
2. Hospices must follow all the requirements, policies and procedures in the Texas Medicaid Hospice Manual.

For questions contact the Maxcine Tomlinson, Medicaid Hospice Program Manager, at 1-800-252-8010.

Sincerely,

Signature -on- file

Marc Gold  
Director  
Long Term Care Policy

JL:mg

[Attachment](#)