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**To: All Medicaid-Enrolled Hospice and Nursing Facility Providers**

**Subject: New Effective Date for OMPP Recoupment Based on Noncompliance with 405 IAC 1-16-4 and Submission of Untimely Hospice Election Forms**

## Overview

The purpose of this bulletin is to inform hospice and nursing facility providers that the Office of Medicaid Policy and Planning (OMPP) has reviewed the date for the recoupment of the direct Medicaid overpayment to the nursing facilities for room and board services. Indiana Medicaid pays for the nursing facility room and board services for dually-eligible Medicare/Medicaid or Medicaid-only nursing facility residents who elect hospice under the Medicare or Medicaid programs. Medicaid update bulletin E98-37 advised hospice and nursing facility providers that May 1, 1998, would be the start date for recoupment of these funds. **The new effective date for the recoupment is July 1, 1999.** This is the final grace period for hospice and nursing facility providers. The responsibilities for hospice and nursing facility providers to ensure compliance with *405 IAC 1-16-4* to avoid extensive recoupment is also outlined in this bulletin.

## Review of *405 IAC 1-16-4*

According to *405 IAC 1-16-4*, direct Medicaid payment to the nursing facility must stop for room and board services the day a nursing facility resident (either dually-eligible Medicare/Medicaid or Medicaid-only) elects hospice care. Any Medicaid payment for nursing facility room and board services must be made by the hospice provider under the terms of the agreement with the nursing facility.

Regardless of the negotiated contract amount between a nursing facility and a hospice provider, the OMPP will only pay the hospice provider 95 percent of the nursing facility case mix rate for room and board services. The hospice provider must then pay the nursing facility under the terms of the contract with the nursing facility.

### **Reminder Regarding Hospice Recipients Residing In Nursing Facilities Who Are Subject to the OMPP Recoupment**

The OMPP previously notified providers in Medicaid update bulletin E98-37 about two groups of hospice recipients residing in nursing facilities for which payment is subject to recoupment:

1. Dually-eligible Medicare/Medicaid hospice recipients in the nursing facility who have elected the Medicare hospice benefit, but who have not been enrolled in the Medicaid hospice benefit are subject to OMPP recoupment. According to federal regulations, a dually-eligible Medicare/Medicaid hospice recipient residing in a nursing facility must elect, revoke, and change provider under both the Medicare and the Medicaid programs. Federal regulations further specify that in states where there is a Medicaid hospice benefit, it is the responsibility of the hospice to submit the required certification forms to the Medicaid State agency.
2. Dually-eligible Medicare/Medicaid or Medicaid-only hospice recipients residing in the nursing facility where the hospice provider has not submitted the election form, the physician certification form, and the plan of care within the specified 10 business day time frame stipulated in the hospice rule or not sent in the hospice forms together as required by the Indiana Medicaid program, are also subject to recoupment.

### **Implications of the New Effective Date for the OMPP Recoupment**

This new effective date has procedural implications for hospice and nursing facility providers. The OMPP will still require hospices and nursing facilities to identify those nursing facility residents who were under hospice care from May 1, 1998, through present who may not have been enrolled in the Medicaid hospice benefit. Hospices and nursing facilities also must develop procedures to ensure that nursing facilities do not bill Medicaid directly for any nursing facility resident that elects hospice care on or after July 1, 1999, since the OMPP will recoup Medicaid overpayments directly from the nursing facility.

### **Procedures for Submission of Outstanding Hospice Election Paperwork**

While the new effective date for recoupment is July 1, 1999, the OMPP must still require that hospices submit outstanding hospice election paperwork for those nursing facility residents who were under hospice care from May 1, 1998, to the present. The reasons are as follows:

- Hospices must work with the contracted nursing facilities to identify those individuals who were under hospice care from May 1, 1998, to present for which the nursing facility billed Medicaid directly and for which the hospice has outstanding paperwork.
- The hospice provider must submit a list **by June 30, 1999**, with the attached paperwork to the attention of Michelle Stein-Ordonez, MS07, Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, Indianapolis, Indiana 46204.
- The OMPP will forward the outstanding paperwork to HCE to be processed in a manner that will ensure that the day-to-day operations of the Medicaid Hospice Authorization Unit is not impacted. Health Care Excel (HCE) will enter the retroactive hospice recipient election date if the individual was Medicaid-eligible as of the hospice election date and if the paperwork has been completed correctly.

### **Inter-Related Policy Change**

This is also to advise all hospice providers that the OMPP has rescinded the policy outlined in Medicaid update bulletin E98-38. The OMPP had indicated in that bulletin that the hospice election date would be moved forward for reimbursement purposes one business day for every business day that the hospice provider was out of compliance with the 10 business day submission deadline. The OMPP has rescinded this policy, effective the last week of March 1999. Therefore, hospice election paperwork can be submitted to Michelle Stein-Ordonez, as instructed in this section, to process payments for previous dates that were denied.

If a hospice received hospice authorization for hospice benefit periods for paperwork processed from November 6, 1998, through March 31, 1999, that reflected a penalty based on Medicaid update bulletin E98-38, it is not necessary to resubmit the paperwork to the HCE Hospice Authorization Unit. Upon receipt of re-certification paperwork for those hospice recipients, the HCE hospice authorization analysts are adjusting the hospice segments.

If hospice providers have approved hospice authorizations that were processed during this time period and the individual has died, the

authorization reflected a penalty based on Medicaid update bulletin E98-38. Hospice providers are asked to send the original hospice Ordenez of the OMPP with a cover letter specifying that the hospice recipient has died, but

Medicaid update bulletin E98-38. The OMPP will then instruct the HCE Hospice Authorization Unit to process the paperwork according

The final two sentences of this section represent the specific language that the HCE hospice analysts will use as they process the resubmitted

inform providers that the hospice segments have been adjusted to allow billing for the dates of service in question.

Approved for Billing: Date: \_\_\_\_\_

**Individuals Who Elect hospice on or after July 1, 1999**

1. Once a nursing facility resident elects the hospice benefit, the hospice provider must remind the nursing facility that billing for the hospice provider beginning on the recipient's hospice election date. The nursing facility should ensure that it does not bill Medicaid under hospice care. The nursing facility should ensure that when a resident elects the reflect that change at Section P1a(o). It is not necessary to submit a care. The hospice provider must submit the hospice certification forms to 10 business day time frame specified by the OMPP.

hospice recipient's room and board, the OMPP will recoup the Medicaid overpayment directly from the nursing facility. The OMPP

will notify nursing facilities on a quarterly basis regarding the names of those nursing facility residents identified as hospice, but not enrolled in the Medicaid hospice benefit. This quarterly notification process will start October 1, 1999, and will be as follows:

- The OMPP will send nursing facility providers written notification of the names of those dually-eligible Medicare/Medicaid or Medicaid-only nursing facility residents who have been identified as electing hospice, but for which the OMPP does not reflect as being enrolled in the Medicaid hospice benefit.
- The nursing facility must then confirm in writing to the OMPP whether that individual is a hospice recipient and what hospice provider is responsible for that individual's hospice care.
- The OMPP will then send a letter to the hospice provider notifying the hospice provider that the nursing facility has confirmed that the individual is receiving hospice care and that the outstanding paperwork must be submitted to HCE Prior Authorization Unit so that the individual may be enrolled in the Medicaid hospice benefit.

These quarterly procedures will be ongoing and the OMPP can work with nursing facilities and hospices regarding compliance with 405 IAC 1-16-4 and OMPP recoupments as a result of non-compliance with 405 IAC 1-16-4.

Hospice and nursing facility providers are further reminded that the OMPP will recoup direct overpayment of funds as previously outlined in Medicaid update bulletin E98-37 which was released to all Medicaid-enrolled hospice and nursing facility providers in November 1998. Providers may obtain a copy of this bulletin by contacting the EDS Customer Assistance Unit.

The OMPP will recoup the original direct payment to nursing facilities for nursing facility room and board services for any nursing facility resident (whether the individual is dually-eligible Medicare/Medicaid or Medicaid-only) who elects hospice care on or after July 1, 1999. The recoupment will also include those hospice recipients who elected hospice care on or before July 1, 1999, and for which the hospice provider has not yet submitted the hospice election paperwork to the HCE Hospice Authorization Unit.

## **OMPP Clarification Regarding Provider Questions and Concerns**

Hospice and nursing facility providers are reminded that federal regulations mandate that hospices and nursing facilities must have an agreement to provide a framework for partnership before hospice

services are initiated. This agreement must also address the contracted reimbursement for nursing facility room and board services for hospice recipients. As has been previously stated in Medicaid update bulletin E98-30, hospices and nursing facilities may negotiate between 95 and 100 percent of the nursing facility Medicaid *per diem* for room and board services without raising concerns about kickbacks or fraud. **Failure by hospice and nursing facilities to update their agreements to address the negotiated reimbursement rate for nursing facility room and board services will not exempt the nursing facility from the OMPP recoupment process.**

A second concern is the manner in which the OMPP is planning to recoup the overpayment for the dually-eligible Medicare/Medicaid hospice recipient. Hospice providers may feel they are placed in an uncomfortable position if they are audited by the Office of the Inspector General (OIG). As the new effective date for the recoupment has been moved to July 1, 1999, hospices and nursing facilities will have ample time to finalize contracts and ensure compliance with 405 IAC 1-16-4, therefore overpayment issues and compliance with OIG fraud alert guidelines should not be a concern.

Hospices and nursing facilities are urged to follow standard accounting principles when developing internal procedures to document receipt of Medicaid reimbursement for dually-eligible Medicare/Medicaid or Medicaid-only recipients. Furthermore, Medicaid-enrolled providers are reminded that under the standard Indiana Medicaid provider agreement, providers must keep records for a period of three years from the initial date of service for a Medicaid recipient. Non-compliance with these standard accounting and record keeping requirements does not exempt providers from the OMPP recoupment process.

Further inquiries regarding the Medicaid hospice benefit may be directed to the EDS Customer Assistance Unit at (317) 655-3240 within surrounding counties, or 1-800-577-1278.