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Some Hospitals Give COVID-19 Patients Oxygen Free to Speed Discharge; 'We Will Take That Risk'

By Nina Youngstrom

Some COVID-19 inpatients are ready for discharge but stuck in beds because hospitals can't always get their hands on home oxygen from durable medical equipment (DME) suppliers. To solve the problem, a handful of California hospitals have entered into leases with DME companies in which the hospitals commit to leasing a certain number of oxygen concentrators and other supplies to guarantee their availability. In turn, the hospitals give home oxygen free to Medicare beneficiaries without checking the boxes of Medicare coverage requirements, a hospital executive told RMC.

"You walk on eggshells when you try to provide something to a beneficiary," said Paul Arias, assistant vice president of care coordination at Loma Linda University Health in California. "Some of us said we will take that risk. I don't want to run the risk of having patients stay in the hospital while I am waiting for the supplier to get supplies and we have run out of oxygen in the state and they would otherwise take up a bed."

The risk here is a civil monetary penalty (CMP). As the HHS Office of Inspector General (OIG) explained in a 2002 special advisory bulletin,^[1] it has the statutory authority to levy CMPs on "a person who offers or transfers to a Medicare or Medicaid beneficiary any remuneration that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of Medicare or Medicaid payable items or services." That includes copay waivers and free items or services. Items of nominal value are allowed (no more than \$15 each, not to exceed \$75 annually), and there are exceptions, although they don't appear to apply to the free oxygen, attorneys said. The same goes for answers to frequently asked questions^[2] that OIG has posted about the application of its administrative enforcement authorities to arrangements directly connected to the COVID-19 public health emergency.

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