BACKGROUND

Medicare hospice program integrity refers to the efforts and measures taken to ensure that hospice providers are operating efficiently, effectively, and in compliance with established regulations and guidelines. This includes preventing fraud, waste, and abuse, as well as maintaining the integrity of the services provided.

The Centers for Medicare & Medicaid Services (CMS) has implemented increased scrutiny of hospice programs related to growing concerns over hospice service fraud. Recent media reporting, and research by CMS, have identified instances of hospices certifying patients for hospice care when they were not terminally ill and providing little to no services to patients. CMS identified inappropriate patient certifications for hospice benefits and insufficient provision of services to hospice beneficiaries. CMS reports that "churn and burn" schemes where a new hospice bills until it is audited or reaches its statutory yearly payment limit, at which point it shuts down, keeps the money, buys a new Medicare billing number, and transfers patients to it, then resumes billing.

The Office of the Inspector General (OIG) has completed years of OIG audits, evaluations, and investigations into hospice care have revealed there are significant problems with the program. Its reports and investigations revealed several concerning issues, including poor—sometimes harmful—quality of care, fraud schemes that involve enrolling beneficiaries without their consent, inappropriate billing practices, limited transparency for patients and their families, a payment system that creates incentives to minimize services, and a rapid growth in the number of new hospices, often to take advantage of these conditions. In response to these findings, CMS revisited and revitalized its hospice program integrity strategy, focusing on identifying bad actors and addressing fraudulent activity to minimize impacts on beneficiaries in the Medicare program. Two critical reports from the OIG in 2019 prompted the passing of the 2021 Consolidated Appropriations Act (CAA) which incorporated hospice program reform.

Other contributing factors for CMS program integrity oversight include:

- Hospice Growth – according to CMS, there were 3,498 in 2010 and there are 5,358 in 2021
- Increasing spending outside the Medicare Hospice Benefit in Medicare Parts A, B, and D
- Increase in live discharge rates – CMS reports the live discharge rate in 2021 was ~17%
- Increasing private equity involvement in the hospice provider community
  - Between 2011 and 2020, private equity deals soared by almost 25 percent
  - According to a 2021 analysis, the number of hospice agencies owned by private equity firms soared from 106 of a total of 3,162 hospices in 2011 to 409 of the 5,615 hospices operating in 2019.
  - Seventy-two percent of hospices acquired by private equity were nonprofits.
  - That trend has accelerated into 2022.

CMS ACTIONS

CMS implemented targeted actions in the last several years related to maintaining the integrity of Medicare hospice services. It has implemented multiple regulations in response to specific hospice program integrity provisions in the CAA in addition to additional oversight action.

CMS STATE OPERATIONS MANUAL APPENDIX M REVISION

The HOSPICE Act in the CAA makes significant changes to the hospice survey and certification process including granting Medicare the flexibility to impose financial penalties and alternative remedies for serious violations instead of hospice program termination. Revisions to Hospice-Appendix M of the State Operations Manual and the Hospice Basic Surveyor Training were posted by CMS on January 23, 2023.

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CMS refined the hospice survey process to focus on quality-of-care findings in the survey process. This approach prioritizes the surveyors' time and attention to those elements that impact the quality of care provided directly to the patient and family.

Hospice providers are surveyed every 3 years (36 months) for Medicare recertification. These surveys are completed by a state survey agency or an accreditation organization if the provider chooses the deemed status route. Both survey entities also can investigate complaints against the provider which could involve a survey as part of that process.

See State Operations Manual Appendix M Guidance to Surveyors: Hospice Updates for detailed information

HOSPICE SITE VISIT PROJECT

In 2023, CMS embarked on a nationwide hospice site visit project, making unannounced site visits to every Medicare-enrolled hospice. Their goal was to make sure that each hospice was operational at the address listed on their enrollment form. If a hospice was not operational at the address listed on their Medicare enrollment form, CMS exercised its authority to either deactivate or revoke the hospice's Medicare billing privileges. CMS visited over 7,000 hospices by mid-August last year.

As a result of the site visit initiative, four hundred hospices are being considered for potential administrative action as of mid-August. While some of these hospices may be able to demonstrate compliance by submitting a valid provider address, others that do not address our findings may be deactivated or revoked. Because of the noted rapid growth in the number of potentially fraudulent hospices in Arizona, California, Nevada, and Texas, CMS is also implementing a provisional period of enhanced oversight in these states. During this period, CMS will conduct a medical review before making payments on claims submitted by newly enrolling hospices.

HOSPICE ENFORCEMENT REMEDIES

Effective January 1, 2022, CMS can impose a range of enforcement penalties for each condition-level deficiency identified during the survey. Regardless of the enforcement remedy, and even if no CMS enforcement remedy is imposed, hospices must still submit a plan of correction for each deficiency cited.

See Hospice Enforcement Remedies for detailed information

HOSPICE SPECIAL FOCUS PROGRAM

The CAA mandated HHS to implement a special focus program (SFP) to address poor-performing hospices that may be providing low-quality and potentially unsafe care. CMS convened a Technical Expert Panel (TEP) in 2022 to assist with the development of an algorithm for identifying poor-performing hospices that should be included in the SFP.

CMS posted the TEP summary recommendation report on April 28, 2023, with the proposed methodology and algorithm to identify providers for the SFP. CMS included the details for the implementation of the SFP in the CY 2024 home health payment update final rule. The SPF is effective on January 1, 2024.

See Special Focus Program for detailed information

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HOSPICE ENROLLMENT CHANGES

In the CY 2024 Home Health Payment Update final rule, CMS implemented weightier scrutiny of hospice owners and managing employees, and new restrictions on the ownership and transfer of hospice programs by updating changes to hospice enrollment including the following:

- Expanding the 36 Month Rule on change of ownership to hospice agencies;
- Requiring hospice administrators and medical directors to be disclosed as managing employees;
- Categorizing hospices as "high risk" providers for Medicare screening purposes, requiring fingerprinting for individuals with 5% or greater ownership
- Shortening the Medicare billing deactivation period

See Hospice Provider Enrollment Updates for detailed information

COMPLIANCE AND PAYMENT AUDITS

CMS has ramped up compliance and payment audits as another part of its hospice program integrity improvement strategy. These audits are a result of audit entities looking at available data sources for irregularities and patterns that may suggest the presence of fraud, abuse, or waste. Ongoing audits are completed by the following entities:

- Medicare Administrative Contractors (MAC)
  - Targeted Probe and Educate (TPE)
  - Additional Documentation request (ADR)
- Supplemental Medicare Review Contractor (SMRC)
- Recovery Audit Contractor (RAC)
- Unified Program Integrity Contractor
- Office of the Inspector General (OIG)

Audit entities will use several data sources such as patient claims and PEPPER reports to determine audit targets. Some key aspects related to hospice compliance audits can include:

- Audit scope
  - Compliance audits may cover a range of areas, including patient care, documentation, billing practices, staff qualifications, and adherence to regulatory requirements
- Frequency
  - Audits can be scheduled or unscheduled and may be conducted regularly to ensure ongoing compliance. Regular audits help hospice providers identify areas for improvement and correction
- Documentation
  - Hospices are required to maintain detailed clinical records related to the provision of patient and family care that is compliant with federal regulations.
- Billing and financial practices
  - Audits often examine billing practices to ensure that hospices are billing accurately and ethically. This includes verifying that the services billed were provided and that they meet the necessary criteria for reimbursement

SPECIAL CLAIMS REVIEW PROJECT

CMS is initiating a pilot project to review hospice claims following an individual's first 90 days of hospice care. Doing this earlier during a patient's length of stay will help inform future medical review activities aimed at determining whether hospices are submitting claims to Medicare for patients who are eligible for the benefit. This pilot will not be limited to Arizona, California, Nevada, and Texas.

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PERIOD OF ENHANCED OVERSIGHT FOR NEW HOSPICES IN AZ, CA, NV, & TX

CMS posted in July 2023 that effective July 13, 2023, it is placing newly enrolled hospices located in Arizona, California, Nevada, and Texas in a provisional period of enhanced oversight related to numerous reports of hospice fraud, waste, and abuse. The number of enrolled hospices has also increased significantly in these states, raising serious concerns about market oversaturation. The provisional period of enhanced oversight will include medical review such as prepayment review.

Review the CMS notice - Period of Enhanced Oversight for New Hospices in Arizona, California, Nevada, & Texas

PROVIDER ATTENTION

Hospice providers must pay close attention to communication from CMS, their MAC, and national hospice news about current compliance and payment audits. It is also important for providers to ensure all the claims they submit are compliant and represent the required services provided to the patient and their family.

See Hospice Compliance Strategies for Success

RESOURCES

- Code of Federal Regulations, Part 418 – Hospice
  https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-418?toc=1
- Program Integrity—An Overview for Hospice Providers (CMS)
  https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/hospice-provideroverview-factsheet.pdf
- Hospice (OIG)
  https://oig.hhs.gov/reports-and-publications/featured-topics/hospice/
- Hospice Educational Resources (CMS)
  https://www.cms.gov/medicare/payment/fee-for-service-providers/hospice/hospice-educational-resources
- CMS Medicare Learning Network® Publications
- CMS Home Health, Hospice & Durable Medical Equipment Open Door Forum

The Home Health, Hospice & Durable Medical Equipment (DME) Open Door Forum (ODF) addresses the concerns of 3 unique healthcare areas within the Medicare & Medicaid Programs – Home Health PPS, the newly proposed competitive bidding for DME and the Medicare Hospice benefit

REFERENCES

Centers for Medicare and Medicaid Services. (2023, Jan 7). Revisions to hospice-appendix M of the state operations manual and the hospice basic surveyor training. Retrieved from https://www.cms.gov/files/document/qso-23-08-hospice.pdf

Centers for Medicare and Medicaid Services. (2023, Feb 3). State operations manual appendix M - guidance to surveyors: hospice. Retrieved from https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/som107ap_m_hospice.pdf

Centers for Medicare and Medicaid Services. (2023, Jul). Period of enhanced oversight for new hospices in Arizona, California, Nevada, and Texas. Retrieved from https://www.cms.gov/files/document/mln7867599-period-enhanced-oversight-new-hospices-arizona-california-nevada-texas.pdf

©CHAP, Inc., 01.2024

Centers for Medicare and Medicaid Services. (2023, Aug 22). CMS is taking action to address benefit integrity issues related to hospice care. Retrieved from https://www.cms.gov/blog/cms-taking-action-address-benefit-integrity-issues-related-hospice-care

Centers for Medicare and Medicaid Services. (2021, Nov 9). Medicare and Medicaid Programs; CY 2022 home health prospective payment system rate update, etc. Retrieved from https://www.govinfo.gov/content/pkg/FR-2021-11-09/pdf/2021-23993.pdf

Centers for Medicare and Medicaid Services. (2023, Nov 13). Calendar Year 2024 home health prospective payment system rate update; home health quality reporting program requirements; etc. Retrieved from https://www.govinfo.gov/content/pkg/FR-2023-11-13/pdf/2023-24455.pdf

KFF. (2022, Jul 9). Hospices have become big business for private equity firms, raising concerns about end-of-life care. Retrieved from https://kffhealthnews.org/news/article/hospices-private-equity-firms-end-of-life-care/

MedPAC. (2022, Mar 15). Report to Congress: Chapter 11: hospice services. Retrieved from https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_Ch11_SEC.pdf

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