Eli's Hospice Insider

Compliance: Terminal Diagnosis Determinations Central To OIG's Latest Round Of Overpayment Assessments

Watch out: Reviewers are choosing audit targets seemingly at random.

Scrutiny of hospice services seems to be still rising. The latest - five recent audit reports from the HHS Office of Inspector General that allege nearly $150 million in hospice overpayments.

"There is definitely increased audit activity focusing on hospices," notes Washington, D.C.-based healthcare attorney **Elizabeth Hogue**, "In addition to the OIG, the [Unified Program Integrity Contractor], Qlarent, is currently focusing audits on hospices," Hogue tells AAPC.

Authorities used to view the small, largely nonprofit hospice industry through a favorable lens, recalls attorney **Robert Markette Jr.** with Hall Render in Indianapolis. Now that Medicare's hospice expenditures have risen, entities like the OIG, the Centers for Medicare & Medicaid Services, the Medicare Payment Advisory Commission, HHH Medicare Administrative Contractors, UPICs, and others are no longer giving hospices the benefit of the doubt.

Particularly since the OIG's two high-profile reports on hospice care quality in 2019, which recounted hospice deficiencies and 12 egregious cases of abuse and neglect, scrutiny of hospice providers has been gearing up, Markette notes. (See coverage of the reports, which featured case studies where a patient had maggots in their feeding tube insertion site and another had a lower leg amputated due to gangrene, in HOP, Vol. 12, No. 8).

Just as it's unfair to judge hospice care quality overall by a few horror stories from bad-apple providers, it's also unfair to cast a cynical eye on hospice claims just because the benefit is growing along with the Medicare population in general, Markette protests. Medicare looks at the growth figures "and sees a nefarious plot," he tells AAPC. In reality, the number of Medicare beneficiaries continues to grow, and so do patients electing hospice.

MedPAC, CMS, and others have also construed the higher ratio of for-profits in the hospice industry as a bad signal. But that's largely a function of Medicare and other payers now being willing to cover the service, Markette contends.

"Hospices used to be nonprofits because there was no payer," Markette explains. Now, with Medicare and other payers on the scene, hospices don't have to undertake the "huge compliance burden" associated with nonprofit status, he says. "It's a legitimate business decision" in response to the current payer environment, he believes.

The intense scrutiny is even more frustrating when hospices seem to be chosen at random for audits, as multiple hospices in the most recent audit reports claims (see related story, p. 4). The OIG "fails to provide any explanation for why Alive [Hospice Inc.] was selected for the audit in the first place," said the Nashville, Tennessee-based provider it its response to its audit. "Rather than focusing on hospice providers with questionable quality and/or billing track records, the OIG chose - inexplicably - to focus on a well-established, not-for-profit hospice that is Gold Seal Approved under The Joint Commission, with a strong and consistent history of high quality scores, exceptional PEPPER reports, and a recent Medicare contractor audit resulting in a 0% claim denial," said Alive's attorney with law firm Bass, Berry & Sims, in the provider's response to the report.

Likewise, audit target Ambercare Hospice Inc. said "it appears the OIG selected Ambercare for audit simply because Ambercare bills Medicare for hospice services," according to its response to the audit report. "The Report does not

provide a single reason why Ambercare specifically was selected for audit," says the letter from Ambercare's attorney, also with Bass, Berry & Sims. "It appears that the only data that the OIG used to identify Ambercare for audit is the number of dollars it bills Medicare for hospice services. Indeed, Ambercare's PEPPER reports confirm Ambercare was not an outlier for any of the data points tracked in those reports either during the time period relevant to the audited claims or at any subsequent time," the Albuquerque, New Mexico-based provider points out.

"This is part of the OIG audit office's routine work," notes **Theresa Forster** with the National Association for Home Care & Hospice. "These providers are not selected for review based on any concern related to fraudulent activity - this is part of the general ongoing oversight work conducted by the OIG," Forster explains.

That's not much consolation for hospices in the hot seat. "A provider who has done nothing wrong gets dragged through the audit process, with millions of dollars at stake," Markette highlights.

OIG, UPIC, and other audits "may be devastating to providers because of very large alleged overpayments identified as a result of these audits," Hogue cautions.

"Even if you're not an outlier in terms of length of stay, diagnoses," or other factors, "that doesn't mean you're safe," Markette stresses. "They're going after everybody."

2 Main Reasons Drive Denials

"Hospices remain extremely vulnerable to audit activity in two key areas," Hogue points out - "whether or not patients have a terminal illness with a prognosis of six months or less if diseases run normal courses, and whether care was medically necessary and reasonable. The standards related to both of these issues remain very vague, which leaves hospices vulnerable to adverse findings," she cautions.

Audits such as the most recent ones by the OIG are generally full of "Monday morning quarterbacking" and judgments made with the benefit of hindsight, Markette charges. Particularly in the area of terminal illness, gray areas abound. "Determining life expectancy is an inexact science," he maintains.