



## Medicare Payments of \$6.6 Billion to Nonhospice Providers Over 10 Years for Items and Services Provided to Hospice Beneficiaries Suggest the Need for Increased Oversight

### Key Takeaways:

For calendar years 2010 through 2019, our data analysis showed the following:

- The majority of \$6.6 billion payments to nonhospice providers for hospice beneficiaries were for Medicare Part B items and services. Nonhospice payments are payments for items and services provided to beneficiaries outside the Medicare hospice benefit during a hospice period of care.
- Nonhospice payments for Medicare Part A services decreased 45 percent and for Part B items and services increased 38 percent.
- Almost half of the 1.2 to 1.6 million hospice beneficiaries each year received nonhospice items and services during a hospice period of care.
- The number of for-profit hospices relative to nonprofit hospices has grown significantly, and the majority of nonhospice payments were associated with for-profit hospices. A prior Office of Inspector General report identified areas of concern with for-profit hospices.

### Purpose of This Data Brief

The Centers for Medicare & Medicaid Services (CMS) has long taken the position that services provided to a hospice beneficiary that are unrelated to the beneficiary's terminal illness and related conditions should be exceptional, unusual, and rare given the comprehensive nature of the services covered under the Medicare hospice benefit. In addition, CMS conducted analyses that indicated an upward trend in payments for items and services provided to Medicare beneficiaries outside the Medicare hospice benefit during a hospice period of care (which we refer to as "nonhospice payments"). Based on the analyses, CMS acknowledges that there may be items and services separately billed to other parts of Medicare (such as Medicare Part B) that are already paid for as part of the daily-rate payment that Medicare makes to hospices.

The purpose of this data brief is to offer insight into potential inappropriate payments to nonhospice providers for items and services provided to Medicare beneficiaries outside the Medicare hospice benefit during a hospice period of care and

to provide CMS with information to evaluate the need to potentially restructure the hospice payment system. In this data brief, we identify trends and patterns in nonhospice payments during a hospice period of care for calendar years 2010 through 2019 (audit period). These payments consist of nonhospice payments for both Medicare Part A services (such as inpatient services) and Part B items and services (such as outpatient Part B services). We did not assess whether these payments were for items and services that treated conditions unrelated to the beneficiary's terminal illness and related conditions.

Our objective was to identify trends and patterns in Medicare nonhospice payments for items and services provided to beneficiaries during a hospice period of care. To provide context for this analysis, we also identify trends and patterns in Medicare hospice payments.

## BACKGROUND

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### Medicare Hospice Services for Beneficiaries

The Tax Equity and Fiscal Responsibility Act of 1982 created the Medicare hospice benefit.<sup>1</sup> Medicare Part A covers hospice services provided to eligible beneficiaries.<sup>2</sup> The goal of hospice care is to help terminally ill beneficiaries continue life with minimal disruption while they remain primarily in the home environment and to support beneficiaries' families and other caregivers. The care is palliative rather than curative. The goal of palliative care is to improve an individual's quality of life by managing pain and relieving symptoms and by providing physical and emotional comfort. Hospice care may be provided to an individual residing at home or another place of residence, such as a skilled or other nursing facility.

To be eligible for Medicare hospice care, a beneficiary must be entitled to Medicare Part A and be certified as having a terminal illness with a life expectancy of 6 months or less if the illness runs its normal course.<sup>3</sup> Upon a beneficiary's election of hospice care, the hospice agency assumes responsibility for medical care related to the beneficiary's terminal illness and related conditions for the hospice period of care. The beneficiary waives Medicare coverage for services related to treatment of the terminal illness and related conditions but retains Medicare

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<sup>1</sup> CMS implemented the hospice benefit through regulation in the final rule that went into effect on November 1, 1983 (48 Fed. Reg. 56008 (Dec. 16, 1983)).

<sup>2</sup> Medicare Part A, also known as hospital insurance, provides for the coverage of various types of services, including hospice services. Medicare Part B provides supplementary medical insurance for medical and other health services.

<sup>3</sup> Social Security Act (the Act) § 1861(dd)(3)(A) and 42 CFR § 418.20. Certification is based on the attending physician's and the hospice medical director's clinical judgment regarding the normal course of the individual's illness (the Act § 1814(a)(7)(A) and 42 CFR § 418.22).

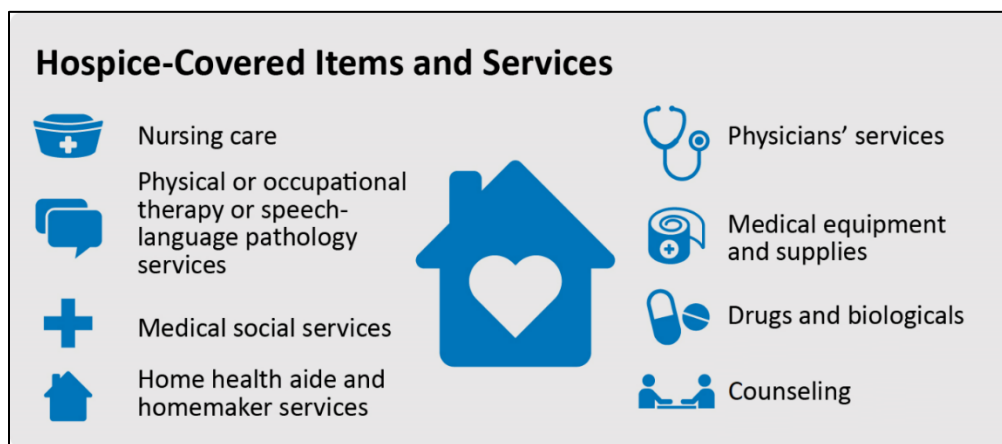
coverage for services to treat conditions unrelated to the terminal illness and related conditions.<sup>4</sup>

An individual must waive all rights to Medicare payments for the following services for the duration of the election of hospice care:

- hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice) and
- any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or services that are equivalent to hospice care, except for services provided by: (1) the designated hospice; (2) another hospice under arrangements made by the designated hospice;<sup>5</sup> or (3) the individual's attending physician, who may be a nurse practitioner if that physician or nurse practitioner is not an employee of the designated hospice or receiving compensation from the hospice for those services.<sup>6</sup>

Coverage under the Medicare hospice benefit requires that hospice services be reasonable and necessary for the palliation and management of the terminal illness and related conditions.<sup>7</sup> See Figure 1 for examples of items and services covered under the Medicare hospice benefit.

**Figure 1: Examples of Items and Services Covered Under the Medicare Hospice Benefit**



<sup>4</sup> The Act § 1812(d)(2)(A) and 42 CFR § 418.24(d). This regulation was amended at 84 Fed. Reg. 38484 (Aug. 6, 2019) and again at 86 Fed. Reg. 42528 (Aug. 4, 2021). This provision is now found at section 418.24(f).

<sup>5</sup> Federal regulations define “arrangements” as those “which provide that Medicare payment made to the provider that arranged for the services discharges the liability of the beneficiary or any other person to pay for those services” (42 CFR § 409.3). CMS is silent on the specifics of the arrangements between the two parties.

<sup>6</sup> See footnote 4.

<sup>7</sup> The Act § 1862(a)(1)(C) and 42 CFR § 418.200.

## Medicare Payments to Hospices

The Medicare hospice benefit has four levels of care: routine home care, continuous home care, inpatient respite care, and general inpatient care. Each level has an all-inclusive daily rate (i.e., per diem) that is paid through Medicare Part A. This per diem payment is intended to cover all services needed for the palliation and management of the terminal illness and related conditions.

In the 1983 final rule, CMS states: “It is our general view that the [Social Security Act § 1812(d)(2)(A) ‘exceptional and unusual circumstances’] waiver required by the law is a broad one and that hospices are required to provide virtually all the care that is needed by terminally ill patients” (48 Fed. Reg. 56008, 56010–11 (Dec. 16, 1983)).<sup>8</sup> In addition, in the Federal Register, CMS states that “it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life” (83 Fed. Reg. 20934, 20946 (May 8, 2018)). CMS reiterated this point in 2019, stating that its “long-standing position [is] that services unrelated to the terminal illness and related conditions should be exceptional, unusual and rare given the comprehensive nature of the services covered under the Medicare hospice benefit” (84 Fed. Reg. 38484, 38506 (Aug. 6, 2019)). All hospice-related services must be provided directly by the hospice or under arrangements with the hospice (42 CFR §§ 418.64 and 418.70). For the duration of an election of hospice care, an individual waives all rights to Medicare payments for: (1) hospice care provided by a hospice other than the hospice designated by the individual and (2) any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected, or a related condition, or that are equivalent to hospice care (42 CFR § 418.24(f)).

## Medicare Nonhospice Payments to Providers for Items and Services Unrelated to a Terminal Illness and Related Conditions

A Medicare nonhospice payment may be made to a provider for items and services that are unrelated to a hospice beneficiary’s terminal illness and related conditions. The furnishing provider must indicate on the claim that a service is not related to the hospice beneficiary’s terminal illness and related conditions (e.g., by including the GW modifier on the claim).<sup>9</sup>

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<sup>8</sup> According to 42 CFR § 418.24(b)(3), for hospice elections beginning on or after October 1, 2020, the election statement should indicate that services unrelated to the terminal illness and related conditions are exceptional and unusual, and the hospice should be providing virtually all care needed by the individual who has elected hospice care.

<sup>9</sup> *Medicare Claims Processing Manual*, chapter 11, § 50.

## Data Used To Develop This Data Brief

Our primary source of data for this data brief was Medicare Part A hospice claims and Medicare Part A and Part B claims for items and services provided outside the hospice benefit during a hospice period of care. We obtained these data from CMS's National Claims History file for calendar years 2010 through 2019. We used service dates from hospice claims to identify items and services that were provided during a hospice period of care.<sup>10</sup> Nonhospice items and services paid by Medicare Part C and Part D were not included in our audit.<sup>11</sup>

We used these data to perform our analysis. We did not independently verify the accuracy of the data reported on the Medicare Part A hospice claims and the Medicare Part A and Part B claims for items and services billed during a hospice period of care. In addition, we did not use medical review to determine whether items and services billed during a hospice period of care were to treat conditions unrelated to the beneficiary's terminal illness and related conditions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Appendix describes our audit scope and methodology.

## RESULTS OF ANALYSIS

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Because there has been substantial growth in the use of hospice care, we analyzed Medicare data to identify trends and patterns in Medicare hospice payments, nonhospice payments, and payments associated with for-profit and nonprofit hospices. The following presents the results of our analysis for the 10-year period from 2010 through 2019. Information in this data brief may provide CMS with information to evaluate the need to potentially restructure the hospice payment system.

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<sup>10</sup> We excluded hospice days that were either admission days or days on which the beneficiary was discharged alive.

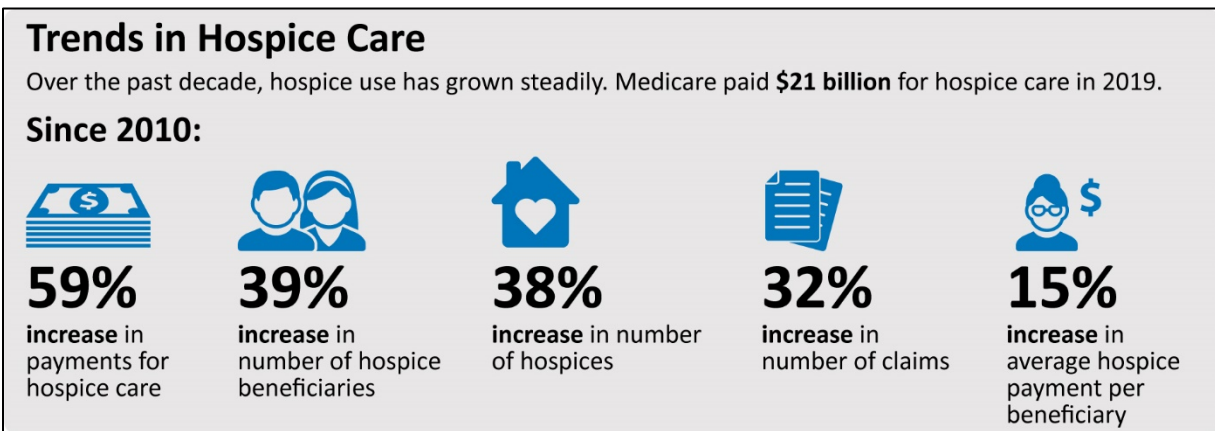
<sup>11</sup> Medicare Part C, also known as Medicare Advantage, includes coverage for services that a beneficiary would receive under Medicare Part A and Part B and may cover additional services, such as outpatient prescription drugs. Medicare Part D covers the cost of prescription drugs.

## Trends in Medicare Hospice Payments

**The rate of increase in Medicare payments for hospice care was greater than the rate of increase in overall Medicare spending.**

Medicare payments for hospice care have grown steadily over the past decade, with total payments of \$163 billion from 2010 through 2019. Medicare Part A paid \$21 billion for hospice care in 2019, an increase of 59 percent since 2010, while total Medicare spending grew 52 percent. Hospice payment growth was driven by an increase in the number of beneficiaries electing to use hospice benefits. About 1.6 million beneficiaries received hospice care in 2019, an increase of 39 percent since 2010, and the total number of Medicare beneficiaries grew 29 percent.<sup>12</sup> (See Figure 2.)

**Figure 2: Hospice Payments, Beneficiaries, Providers, and Claims and the Average Hospice Payment per Beneficiary All Increased During Our Audit Period**



CMS projects that total Medicare hospice payments will continue to increase at a rate of 8.5 percent annually, reflecting an increase in the number of Medicare beneficiaries, more beneficiary awareness of the Medicare hospice benefit for end-of-life care, and a growing

<sup>12</sup> The Boards of Trustees, Federal Hospital Insurance, and Federal Supplementary Medical Insurance Trust Funds; *2011 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medicare Insurance Trust Funds* and *2020 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medicare Insurance Trust Funds*. Available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/TrusteesReports>. Accessed on June 25, 2021.

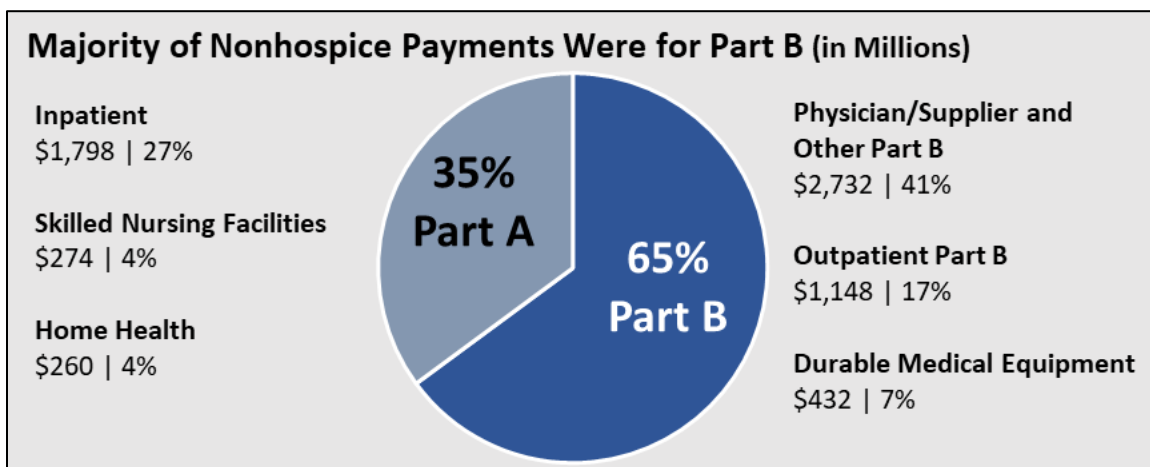
preference for care provided in home and community-based settings.<sup>13</sup> This increase is greater than CMS’s projected 7.4-percent annual increase for overall Medicare spending.<sup>14</sup>

## Trends and Patterns in Medicare Part A and Part B Nonhospice Payments During a Hospice Period of Care

**The majority of nonhospice payments during a hospice period of care were for Medicare Part B items and services.**

During our audit period, nonhospice payments for Medicare Part A services and Part B items and services totaled \$6.6 billion, which was 4 percent of the \$163 billion in total Medicare hospice payments. Of the \$6.6 billion, \$4.3 billion (65 percent) was attributable to Part B items and services, with physician/supplier and other Part B items and services being the largest category;<sup>15</sup> and \$2.3 billion (35 percent) was attributable to Part A services, with inpatient services being the largest category. (See Figure 3.)

**Figure 3: Of Total Nonhospice Payments, 65 Percent Were for Medicare Part B Items and Services**



<sup>13</sup> Medicare Program; FY 2020 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements, 84 Fed. Reg. 38484 (Aug. 6, 2019). Available at <https://www.federalregister.gov/documents/2019/08/06/2019-16583/medicare-program-fy-2020-hospice-wage-index-and-payment-rate-update-and-hospice-quality-reporting>. Accessed on June 25, 2021.

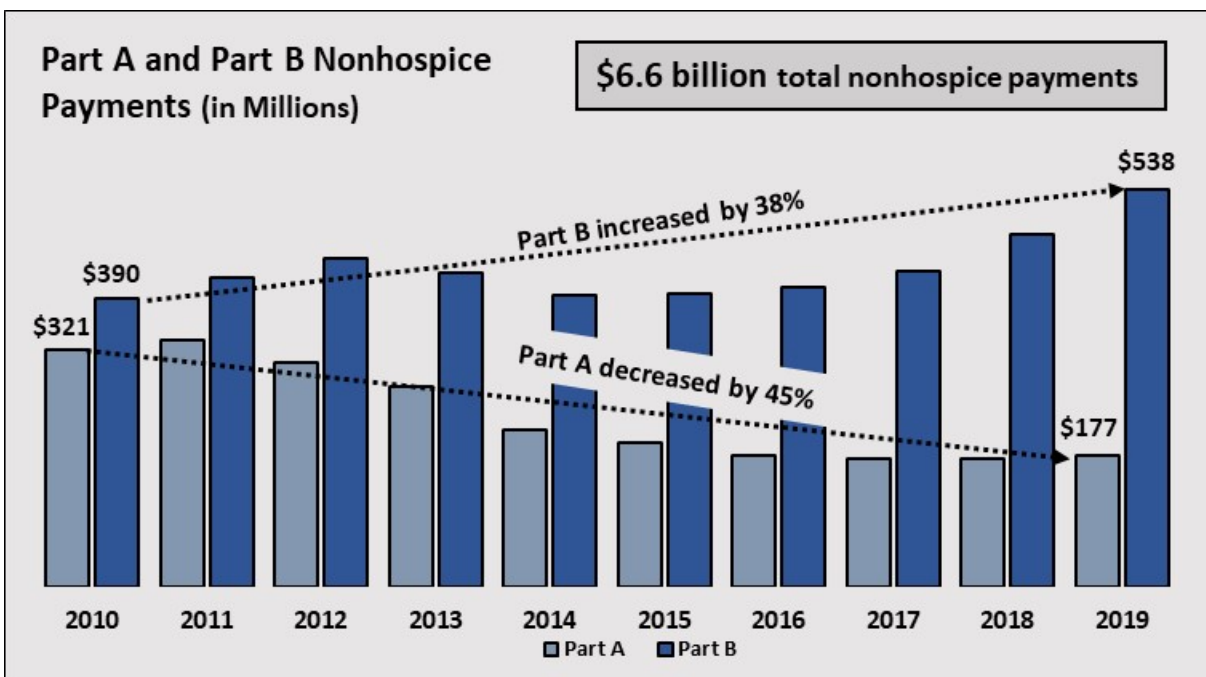
<sup>14</sup> CMS’s Office of the Actuary released projections of national health expenditures for 2018 through 2027 (Feb. 2019). Available at <https://www.cms.gov/newsroom/press-releases/cms-office-actuary-releases-2018-2027-projections-national-health-expenditures>. Accessed on June 25, 2021.

<sup>15</sup> Examples of physician/supplier and other Part B services include a physician’s evaluation and management visit, ambulance services, and collection of blood samples.

Nonhospice payments for Medicare Part A services provided during a hospice period of care decreased significantly, and nonhospice payments for Part B items and services provided during a hospice period of care increased significantly.

Nonhospice payments for Medicare Part A services decreased by 45 percent and nonhospice payments for Part B items and services increased by 38 percent from 2010 to 2019 (Figure 4).

**Figure 4: Nonhospice Payments for Medicare Part A Services Decreased by 45 Percent and for Part B Items and Services Increased by 38 Percent**



The number of beneficiaries who received Medicare Part A nonhospice services decreased by 31 percent and the number of claims paid decreased by 40 percent during our audit period. The number of beneficiaries who received Medicare Part B nonhospice items and services increased by 30 percent and the number of claims paid increased by 19 percent during the same period. (See Figure 5 on the following page.)



**Figure 5: Payments for Medicare Part A Nonhospice Services, the Number of Beneficiaries Who Received Those Services, and the Number of Associated Paid Claims Decreased, While Those Numbers for Part B Nonhospice Services Increased**




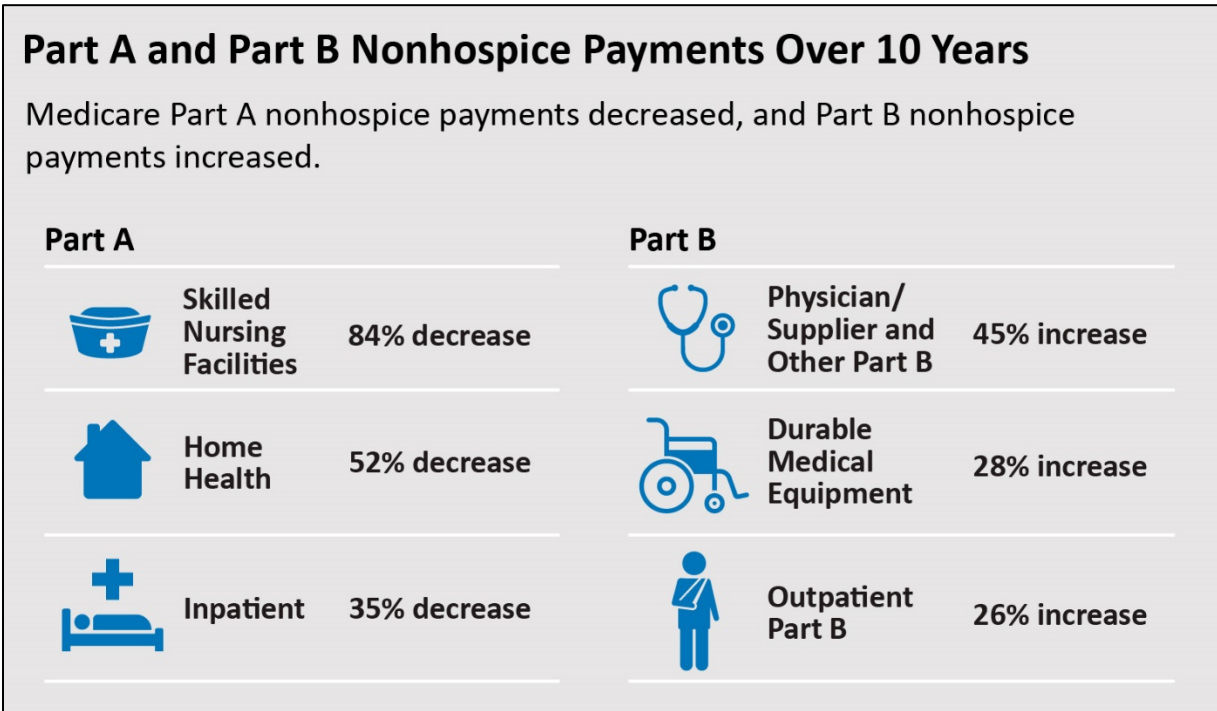
		<b>Part A</b>	<b>Part B</b>
	<b>Nonhospice Payments</b>	<b>45% decrease</b>	<b>38% increase</b>
	<b>Beneficiaries Receiving Nonhospice Services</b>	<b>31% decrease</b>	<b>30% increase</b>
	<b>Number of Claims</b>	<b>40% decrease</b>	<b>19% increase</b>

Figure 6 on the following page shows the percentage decreases in payments for Medicare Part A services and the percentage increases in payments for Part B items and services, by type of item or service, over the 10-year audit period:

- Skilled nursing facility services totaled \$8 million in 2019, a decrease of 84 percent since 2010.
- Home health services totaled \$18 million in 2019, a decrease of 52 percent since 2010.
- Inpatient services totaled \$151 million in 2019, a decrease of 35 percent since 2010.
- Physician/supplier and other Part B items and services totaled \$344 million in 2019, an increase of 45 percent since 2010.
- Durable medical equipment totaled \$57 million in 2019, an increase of 28 percent since 2010.
- Outpatient Part B items and services totaled \$137 million in 2019, an increase of 26 percent since 2010.

**Figure 6: Nonhospice Payments for Medicare Part A Services Decreased and Nonhospice Payments for Part B Items and Services Increased Over 10 Years**



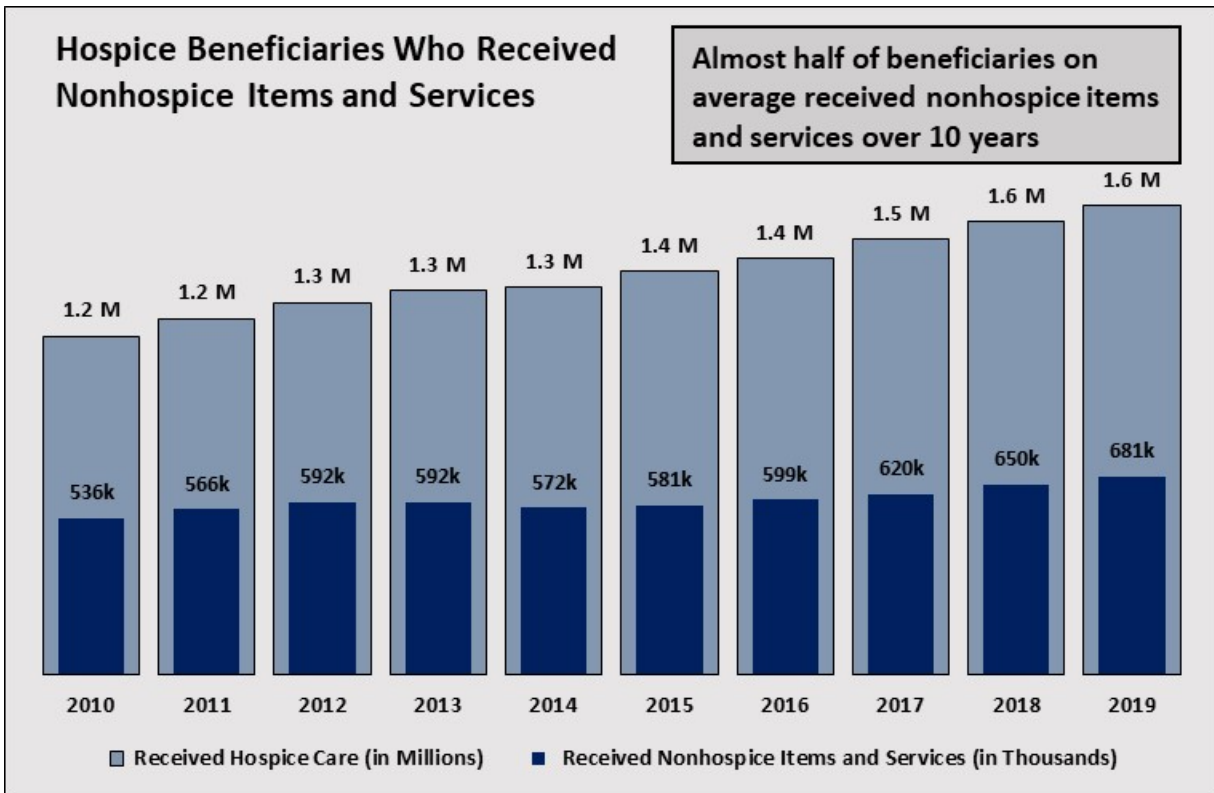
**Almost half of hospice beneficiaries each year received nonhospice items and services during a hospice period of care.**

The \$6.6 billion in nonhospice payments for our audit period was associated with an average of 44 percent of hospice beneficiaries who received Medicare Part A services and Part B items and services during a hospice period of care over the 10-year audit period.<sup>16</sup> The remaining average of 56 percent of beneficiaries did not receive nonhospice items and services.

The percentage of hospice beneficiaries who received nonhospice items and services relative to the total number of hospice beneficiaries remained at an average of 44 percent over the 10-year audit period (Figure 7 on the following page), which indicates that a potential inappropriate “unbundling” of items and services from the hospice benefit still exists as the number of hospice beneficiaries increases. Unbundling occurs when a provider separately bills other parts of Medicare (such as Medicare Part B) for items and services that are already paid for under the hospice per diem.

<sup>16</sup> The percentage of hospice beneficiaries who received Medicare Part A services and Part B items and services each year ranged from 41 to 47 percent, resulting in an average of 44 percent over the 10-year audit period.

**Figure 7: Almost Half of Hospice Beneficiaries Received Nonhospice Items and Services Over the 10-Year Audit Period**



**The potential exists for inappropriate payments for Medicare Part B nonhospice items and services during a hospice period of care regardless of whether the GW modifier was used.**

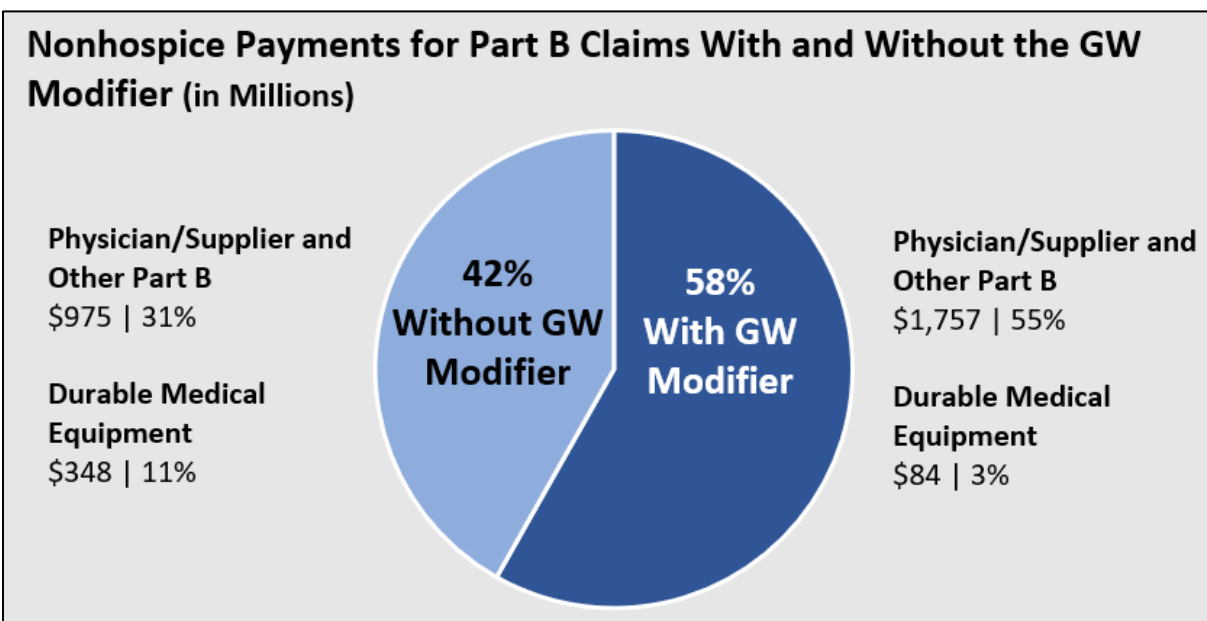
Over the 10-year audit period, of the \$6.6 billion in Medicare nonhospice payments, physician/supplier and other Part B items and services and durable medical equipment totaled \$3.2 billion.<sup>17</sup> Approximately 58 percent of the \$3.2 billion in nonhospice payments was for Medicare Part B claims that had the GW modifier, and 42 percent was for Part B claims that did not have the GW modifier (Figure 8 on the following page).<sup>18</sup> Including the GW modifier on a Part B claim indicates that a service is not related to the hospice beneficiary’s terminal illness and related conditions.

<sup>17</sup> This analysis is limited to Medicare Part B claims for physician/supplier and other Part B items and services and durable medical equipment, which are submitted on Form CMS-1500, Health Insurance Claim Form. Because outpatient Part B services are not submitted on Form CMS-1500, these services are not included in this analysis.

<sup>18</sup> The claims in this analysis may include other modifiers. Another modifier that may be included on claims for physician/supplier and other Medicare Part B items and services is the GV modifier (which indicates that the attending physician is not employed or paid under arrangements with the hospice provider and that the items or services are related to the terminal illness).

A prior Office of Inspector General (OIG) audit (which had the audit period January 1, 2015, through April 30, 2019) found that 63 percent of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) claims billed with the GW modifier and 58 percent of DMEPOS claims billed without the GW modifier were in error and should have been included in the hospice per diem payment.<sup>19</sup> The error rate for DMEPOS claims with or without the GW modifier highlights the potential for inappropriate payments for all Medicare Part B nonhospice items and services regardless of whether the GW modifier was used.

**Figure 8: The Majority of Nonhospice Payments for Medicare Part B Claims Had the GW Modifier**



### Trends in Medicare Hospice and Nonhospice Payments Associated With For-Profit and Nonprofit Hospices

A prior OIG report identified areas of concern with for-profit hospices. OIG found that for-profit hospices accounted for the majority of hospices providing care to beneficiaries, for-profit hospices were more likely than other hospices to bill inappropriately for general inpatient care, and the median stay for beneficiaries in certain settings who were served by for-profit hospices was longer than the median stay for beneficiaries served by nonprofit hospices.<sup>20</sup> From 2010 to 2019, the number of for-profit hospices relative to nonprofit hospices has grown significantly. The following presents trends and patterns in hospice and nonhospice payments associated with for-profit and nonprofit hospices.

<sup>19</sup> *Medicare Improperly Paid Suppliers an Estimated \$117 Million Over 4 Years for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Provided to Hospice Beneficiaries* ([A-09-20-03026](#)), issued Nov. 16, 2021.

<sup>20</sup> *Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio* ([OEI-02-16-00570](#)), issued July 30, 2018.



**The percentage of hospice payments associated with for-profit hospices relative to nonprofit hospices increased, as did the number of for-profit hospices relative to nonprofit hospices.**

Over the 10-year audit period, 57 percent of the total \$163 billion in Medicare hospice payments was associated with for-profit hospices. Hospice payments associated with for-profit hospices totaled \$12.7 billion in 2019, an increase of 87 percent since 2010, and hospice payments associated with nonprofit hospices totaled \$8 billion in 2019, an increase of 34 percent since 2010.

For our audit period, the total number of hospices increased as the number of for-profit hospices increased. From 2010 to 2019, the number of for-profit hospices increased by 78 percent, from 2,000 to 3,562, while the number of nonprofit hospices decreased by 12 percent, from 1,530 to 1,342. By 2019, for-profit hospices made up more than two-thirds of all hospice providers. Because of the growth in the number of for-profit hospices and the decline in the number of nonprofit hospices, for-profit hospices received a larger share of Medicare hospice payments than nonprofit hospices during our audit period.<sup>21</sup>

See Figure 9 for a summary of hospice payments and providers by for-profit and nonprofit status.

**Figure 9: Payments and Number of Providers Associated With For-Profit Hospices Relative to Nonprofit Hospices Increased Over 10 Years**

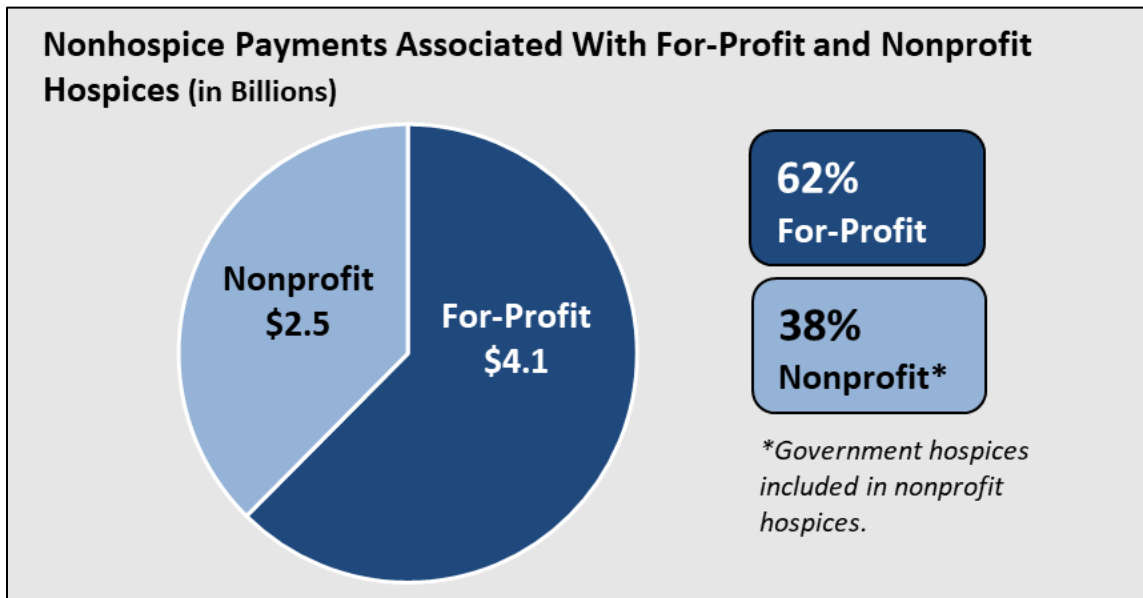
		For-Profit	Nonprofit
	<b>Hospice Payments</b>	<b>87% increase</b>	<b>34% increase</b>
	<b>Number of Providers</b>	<b>78% increase</b>	<b>12% decrease</b>

<sup>21</sup> For 86 hospices (less than 1 percent of the total number of hospices), we could not categorize the hospices as for-profit or nonprofit because of a lack of information.

**Nonhospice payments during a hospice period of care associated with for-profit hospices increased.**

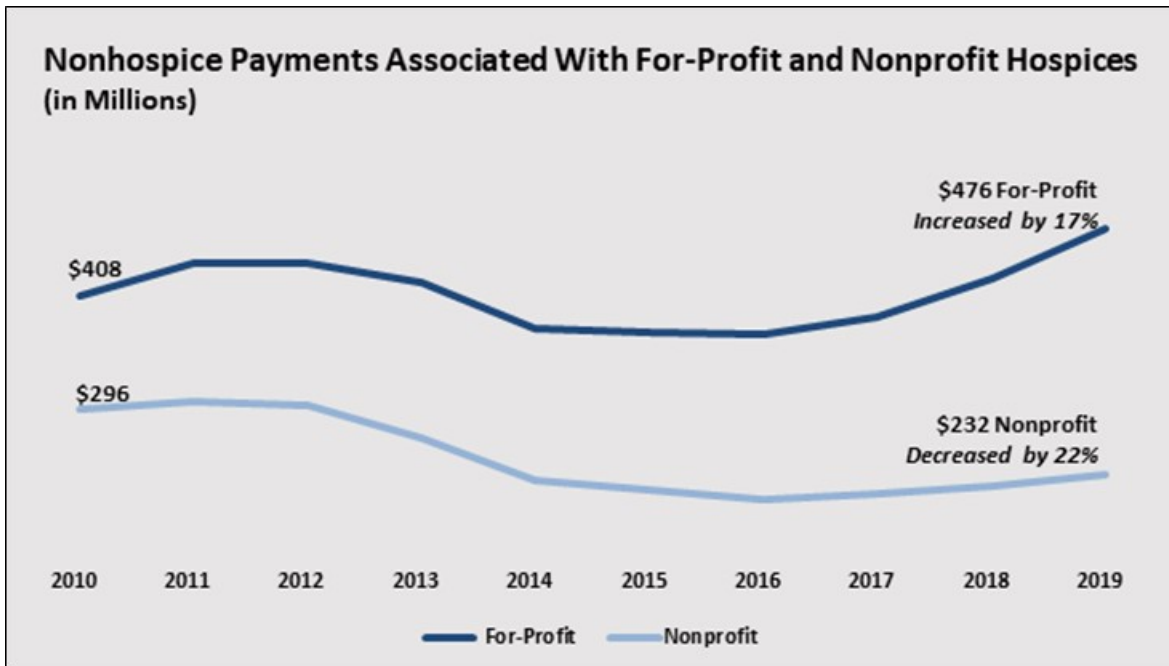
Over the 10-year audit period, 62 percent of the total \$6.6 billion in Medicare nonhospice payments for Medicare Part A services and Part B items and services was associated with for-profit hospices (Figure 10).

**Figure 10: Of Total Nonhospice Payments, 62 Percent Was Associated With For-Profit Hospices**



Nonhospice payments associated with for-profit hospices totaled \$476 million in 2019, an increase of 17 percent since 2010. In contrast, nonhospice payments associated with nonprofit hospices totaled \$232 million in 2019, a decrease of 22 percent since 2010. (See Figure 11 on the following page.)

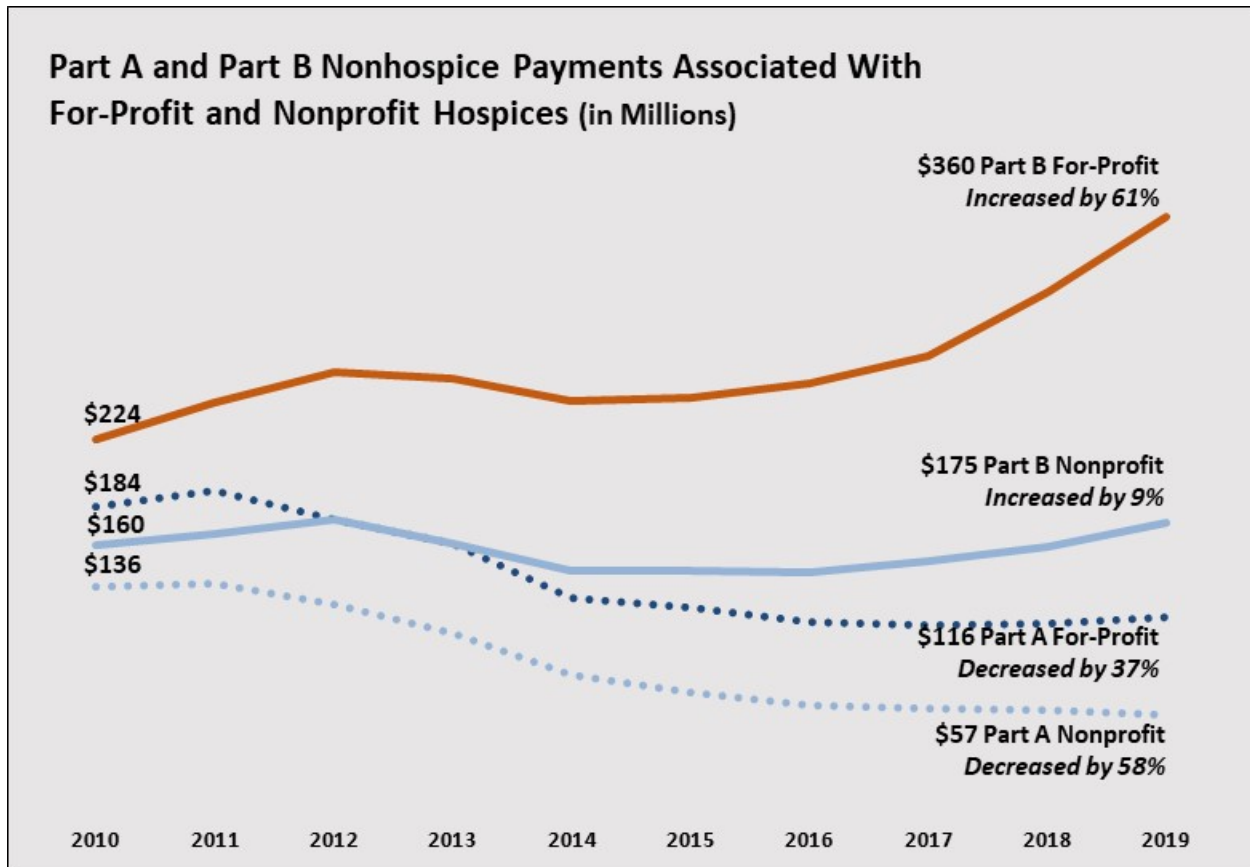
**Figure 11: Over 10 Years, Nonhospice Payments Associated With For-Profit Hospices Increased, and Nonhospice Payments Associated With Nonprofit Hospices Decreased**



**Medicare Part A nonhospice payments associated with for-profit and nonprofit hospices during a hospice period of care decreased significantly, while Part B nonhospice payments associated with for-profit hospices during a hospice period of care increased significantly.**

Medicare Part A nonhospice payments associated with: (1) for-profit hospices totaled \$116 million in 2019, a decrease of 37 percent since 2010, and (2) nonprofit hospices totaled \$57 million in 2019, a decrease of 58 percent since 2010. In contrast, Medicare Part B nonhospice payments associated with: (1) for-profit hospices totaled \$360 million in 2019, an increase of 61 percent since 2010, and (2) nonprofit hospices totaled \$175 million in 2019, an increase of 9 percent. (See Figure 12 on the following page.)

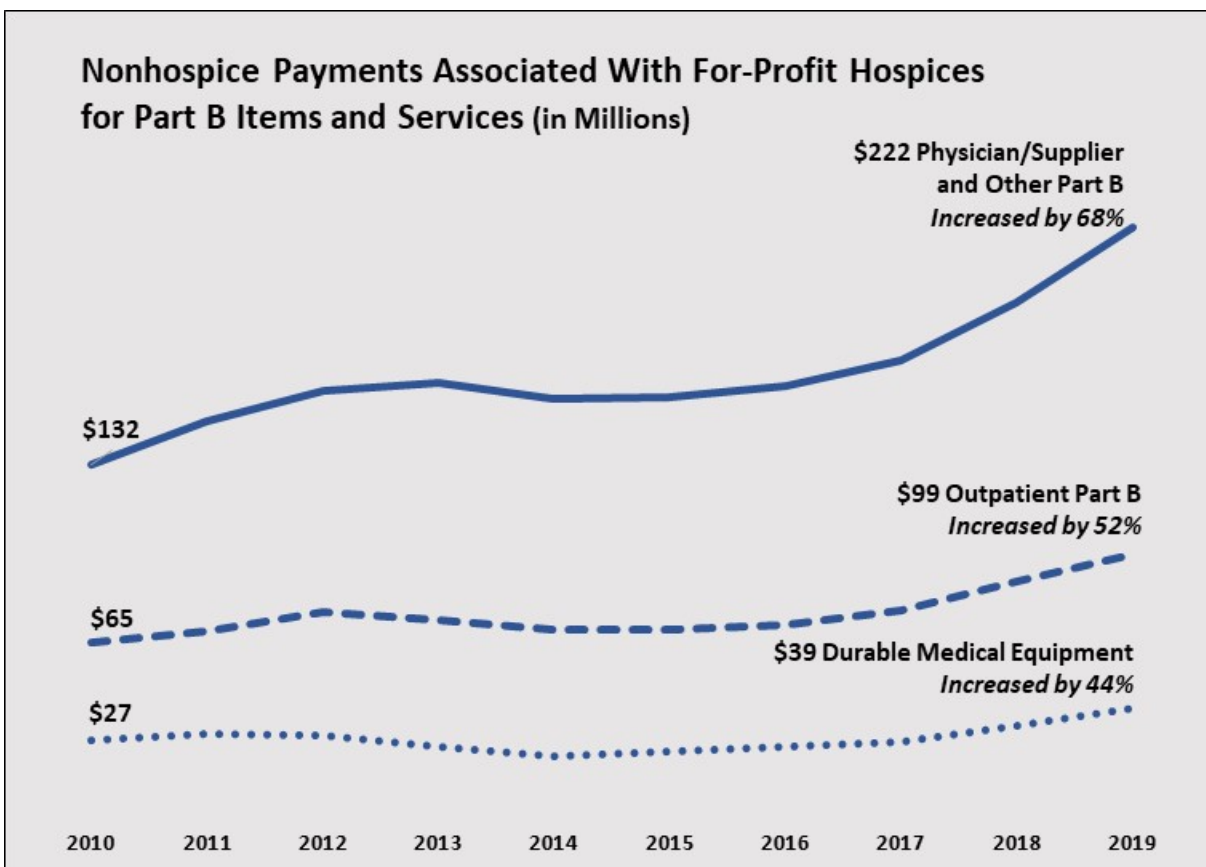
**Figure 12: Over 10 Years, Medicare Part B Nonhospice Payments Associated With For-Profit Hospices Increased Significantly**



Over the 10-year audit period, for Medicare Part B items and services, nonhospice payments associated with for-profit hospices increased as follows: (1) Physician/supplier and other Part B items and services increased by 68 percent, (2) outpatient Part B items and services increased by 52 percent, and (3) durable medical equipment increased by 44 percent (Figure 13 on the following page).



**Figure 13: Of Total Medicare Part B Nonhospice Payments Associated With For-Profit Hospices, the Largest Increase Was for Physician/Supplier and Other Part B**

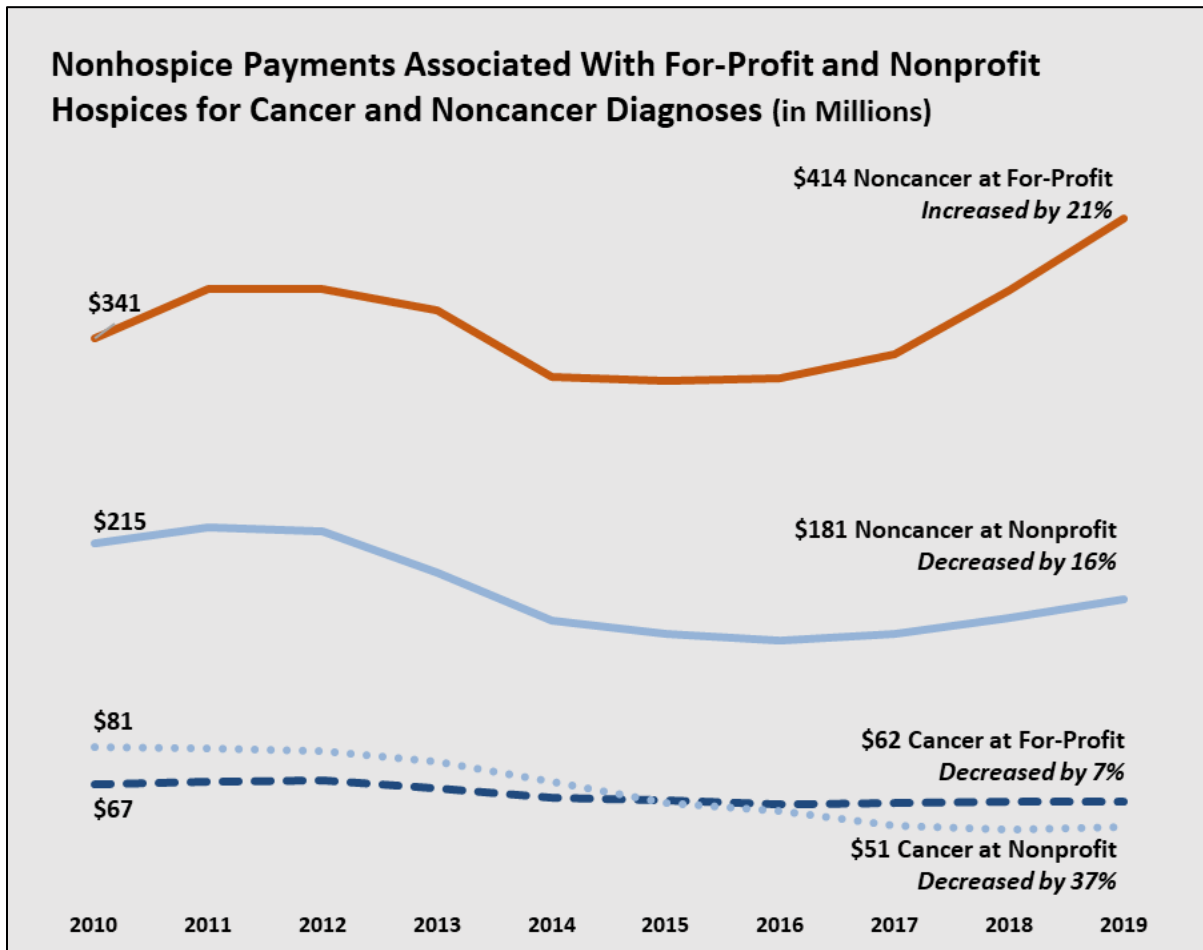


**Nonhospice payments associated with for-profit hospices for beneficiaries with a noncancer diagnosis increased.**

When CMS implemented the hospice benefit in 1983, a significant portion of hospice beneficiaries had a cancer diagnosis; however, the hospice benefit is now more commonly used by beneficiaries with a noncancer diagnosis.

During our audit period, nonhospice payments associated with for-profit and nonprofit hospices were higher for beneficiaries with a noncancer diagnosis than for beneficiaries with a cancer diagnosis. From 2010 to 2019, nonhospice payments associated with for-profit hospices for beneficiaries with a: (1) noncancer diagnosis increased by 21 percent and (2) cancer diagnosis decreased by 7 percent. In the same period, nonhospice payments associated with nonprofit hospices for beneficiaries with a: (1) noncancer diagnosis decreased by 16 percent and (2) cancer diagnosis decreased by 37 percent. (See Figure 14 on the following page.)

**Figure 14: Over 10 Years, Nonhospice Payments Associated With For-Profit Hospices for Beneficiaries With a Noncancer Diagnosis Increased Significantly**



## CONCLUSION

The results of our data analysis demonstrate an increase in Medicare nonhospice payments for beneficiaries during a hospice period of care. Nonhospice payments for Medicare Part A services and Part B items and services totaled \$6.6 billion from 2010 through 2019, and the majority of payments were for Part B items and services. In addition, the percentage of hospice beneficiaries who received nonhospice items and services remained at an average of 44 percent over the 10-year audit period, which indicates that a potential inappropriate “unbundling” of items and services from the hospice benefit still exists. If providers bill Medicare for nonhospice items and services that potentially should be covered by hospices, Medicare could pay for the same items or services twice. Our prior work on Medicare Part D drugs and DMEPOS items provided to hospice beneficiaries demonstrated that these duplicate payments are, in fact, occurring.

In three prior OIG reports, we made several recommendations to CMS to establish oversight and scrutiny of Medicare nonhospice payments:

- Two prior OIG reports recommended that CMS: (1) work directly with hospices to ensure that they are providing drugs covered under the hospice benefit and (2) develop and execute a strategy to ensure that Medicare Part D does not pay for drugs that should be covered by the Part A hospice benefit.<sup>22</sup> Working directly with hospices to ensure that they are providing the drugs covered under the hospice benefit as necessary is a key part of oversight. Although CMS stated that it has directed certain plan sponsors to conduct audits for payments made for beneficiaries who are enrolled in hospice care to ensure that payments are made appropriately, the recommendations in these two reports remain unimplemented.
- A prior OIG report on DMEPOS items provided during a hospice period of care recommended that CMS study the feasibility of including palliative items and services not related to a beneficiary’s terminal illness and related conditions within the hospice per diem.<sup>23</sup> (This audit included payments for DMEPOS items that suppliers provided to hospice beneficiaries during a hospice period of care as nonhospice payments.) This recommendation is currently unimplemented.

Effective October 1, 2020, CMS implemented a policy for patient notification of hospice noncovered items, services, and drugs. CMS stated that these changes should hold hospices accountable to their beneficiaries through benefit coverage transparency, which should reduce the need for beneficiaries to seek care outside of the hospice benefit for services related to the terminal illness.<sup>24</sup> CMS conducted analyses and acknowledged that trends in payments for items, services, and drugs provided to Medicare beneficiaries outside the Medicare hospice benefit during a hospice period of care indicated that a potential inappropriate “unbundling” of items, services, and drugs existed. CMS continues to monitor hospice trends and vulnerabilities for ongoing analyses, program integrity efforts, and potential future rulemaking.<sup>25</sup>

Implementing the recommendations from the three prior OIG reports and considering the information in this data brief may help CMS further evaluate the need to potentially restructure the hospice payment system to reduce duplicate payments for items and services that should be included in the hospice per diem payment. The information in this data brief may also help

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<sup>22</sup> *Medicare Part D Is Still Paying Millions for Drugs Already Paid for Under the Part A Hospice Benefit* ([A-06-17-08004](#)), issued Aug. 22, 2019; and *Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio* ([OEI-02-16-00570](#)), issued July 30, 2018.

<sup>23</sup> *Medicare Improperly Paid Suppliers an Estimated \$117 Million Over 4 Years for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Provided to Hospice Beneficiaries* ([A-09-20-03026](#)), issued Nov. 16, 2021.

<sup>24</sup> 84 Fed. Reg. 38484 (Aug. 6, 2019), amending 42 CFR § 418.24.

<sup>25</sup> 86 Fed. Reg. 19700, 19713–17 (Apr. 14, 2021) and 86 Fed. Reg. 42528, 42532 (Aug. 4, 2021).

CMS determine whether the hospice benefit is operating consistent with its longstanding position that services unrelated to a hospice beneficiary's terminal illness and related conditions should be exceptional, unusual, and rare given the comprehensive nature of the services covered under the Medicare hospice benefit.

OIG plans to conduct additional audits related to nonhospice items and services provided during a hospice period of care to determine whether Medicare payments for these items and services were made in accordance with Medicare requirements.

The information in this data brief presents trends and patterns in hospice and nonhospice payments during a hospice period of care and is provided for informational purposes only; therefore, the data brief does not contain any new recommendations.

## **CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

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CMS provided technical comments on our draft data brief, which we addressed as appropriate. CMS did not submit comments other than those technical comments.

## APPENDIX: AUDIT SCOPE AND METHODOLOGY

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### Scope

Our primary source of data for this data brief was Medicare Part A hospice claims and Medicare Part A and Part B claims for items and services provided outside the hospice benefit during a hospice period of care. We obtained these data from CMS's National Claims History file for calendar years 2010 through 2019. We used service dates from hospice claims to identify items and services that were provided during a hospice period of care.<sup>26</sup> Nonhospice items and services paid by Medicare Part C and Part D were not included in our audit.

We used these data to perform our analysis. We did not independently verify the accuracy of the data reported on the Medicare Part A hospice claims and the Medicare Part A and Part B claims for items and services billed during a hospice period of care. In addition, we did not use medical review to determine whether items and services billed during a hospice period of care were to treat conditions unrelated to the beneficiary's terminal illness and related conditions.

### Methodology

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- identified all Medicare Part A paid hospice claims and Medicare Part A and Part B claims for items and services provided outside the hospice benefit during a hospice period of care;
- identified trends and patterns for hospice and nonhospice payments; and
- discussed the results of our audit with CMS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>26</sup> We excluded hospice days that were either admission days or days on which the beneficiary was discharged alive.