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Hospice House Network Inpatient Conference

Trends & Recent Developments in Hospice General Inpatient Care Policy and Enforcement

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AGENDA

- Hospice General Inpatient (GIP) Regulatory Overview
- Industry Trends to Watch
- Government GIP Enforcement Issues
- State Law Issues
- Things to Keep in Mind

Medicare Levels for Hospice Care

1. Routine Home Care
2. Continuous Care (a/k/a Comfort Care)
3. Inpatient Respite Care
4. ***General Inpatient Care***
   - Must be provided in a Medicare or Medicaid facility
     - *Medicare-certified hospice meeting the conditions of participation for providing inpatient care directly – 42 C.F.R. 418.110; or*
     - *Medicare certified hospital or skilled nursing facility that provides 24-hour nursing services and patient areas.*
   - Intended for short-term management of pain and other symptoms that cannot be properly managed in other hospice setting.

Industry Trends to Watch*
A Congressional Advisor's Perspective

- Hospice use among Medicare beneficiaries has grown substantially over the past decade.
- The number of hospices providing care to Medicare beneficiaries has more than doubled since 2000 in response to increased utilization of the benefit.
- The growth in hospices has been almost entirely in the for-profit hospice provider sector.

*Source: Medicare Payment Advisory Commission (MedPAC). Hospice services: Assessing payment adequacy and updating payments. March 2013 Report to the Congress.

Industry Trends to Watch*
An Enforcement Agency's Perspective

- General Inpatient Care
  - Accounts for 8% of the $13.7 billion in Medicare spending on hospice care
- Although inpatient hospitals and SNFs may provide hospice GIP, the majority of GIP care (58%) occurs in hospice inpatient units.
  - Hospices with inpatient units are 23% more likely to provide GIP care to beneficiaries than hospices which do not have inpatient units.
  - GIP provided in hospice inpatient units results in longer lengths of stay than GIP provided in other settings.

*Source: U.S. Dep't of Health & Human Svcs, Office of Inspector Gen., Medicare Hospice: Use of General Inpatient Care (May 3, 2013)

Industry Trends to Watch*

- Respite Care
  - In addition to providing GIP, hospice inpatient units may also provide inpatient respite care.
  - Low utilization
    - Inpatient respite care accounts for just 0.2% of hospice days.
  - Hospices are permitted to charge beneficiaries 5% of Medicare's respite care payment per day, but few hospices actually charge or collect the respite coinsurance.

*Source: Medicare Payment Advisory Commission (MedPAC). Hospice services: Assessing payment adequacy and updating payments. March 2013 Report to the Congress.

Total Recovery from Fraud & Abuse Enforcement in 2012

$4.2 Billion

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Enforcement Entities

- **U.S. Department of Justice**
  - 94 United States Attorney Offices in each judicial district, along with “Main Justice” in Washington, DC,
    - prosecute individuals, groups of individuals, institutions, and businesses that are accused of engaging in health care “fraud.”
  - The DOJ Criminal and the Civil Divisions work closely with FBI and other law enforcement agencies including the include the Office of the Inspector General of the United States Department of Health and Human Services (OIG), Postal Service, and state Attorneys General (MFCUs).

False Claims Act

- **False Claims Act (FCA)**
  - Triggered if any person knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government.
- **Whistleblowers and *Qui Tam* Complaints**
  - Private persons (i.e., whistleblowers/"relators") can file complaint under court seal for violations on behalf of the government. A suit filed by an individual on behalf of the government is known as a "*qui tam*" action.
- **Penalties**
  - $5,500 - $11,000 per claim plus the amount of the government's damages
- **Damage Multiplier**
  - The government's damages may be trebled (x3)
- **Settlements often results in CIAs with OIG**

Enforcement Entities

- **OIG (wears several hats)**
  - OIG identifies and combats waste, fraud, and abuse in the HHS's more than 300 programs, including the Medicare and Medicaid programs.
    - The Office of Investigations (OI) conducts criminal, civil and administrative investigations of allegations of wrongdoing regarding HHS programs/ beneficiaries. Badges and Guns.
    - The Office of Audit Services (OAS) audits the performance of HHS programs and Medicare and Medicaid providers.
    - The Office of Evaluations and Inspections (OEI) conducts high level, policy evaluations to make recommendations on how to strengthen programs, often using audit techniques to gather data and information.
    - The Office of Counsel to the Inspector General (OCIG) represents OIG in all civil and administrative fraud cases and negotiates and monitors corporate integrity agreements.

OIG Reviews: GIP on the Radar

- **HHS OIG Work Plans and Hospice**
  - Hospital Transfers to Hospice
    - *(report just issued – hospital payment focus)*
  - Hospice Marketing Practices/Financial Relationships with Nursing Facilities
    - *Inpatient Care focus?*
  - Hospice GIP care was featured in both the 2013 and 2012 OIG Work Plans.
    - *"concerns that this level of hospice care is being misused"*

Other Enforcement “Players”

- **Medicaid Fraud Control Units (MFCUs)**
  - Medicaid Fraud Control Units (MFCU) investigate and prosecute Medicaid fraud as well as patient abuse and neglect in health care facilities.
  - MFCUs operate in 49 States and in the District of Columbia.
  - Forty-four of the MFCUs are located as part of Offices of State Attorneys General; the remaining 6 are in other State agencies.

Administrative Enforcement Tools

- **Medicare Administrative Contractors (MACs)**
  - Private companies that serve as contractors performing claims administration.
- **Recovery Audit Contractors (RACs)**
  - Detect and collect overpayments, identify underpayments, and take actions to prevent future improper payments.
  - "Bounty Hunter" model due to being paid on contingency fee basis for recoveries.

Enforcement Tools (Continued)

- **Zone Program Integrity Contractors (ZPICs)**
  - For-profit contractors paid on contractual basis
  - Combined oversight of all Medicare Providers
  - Perform both Medical Review and Benefit Integrity Review
    - Medical Chart Review
    - Data Analysis
    - Medicare evidence-based policy auditing
  - ZPICs initiate payment suspensions, overpayment recoveries, and referrals of providers to law enforcement authorities.
  - Increasingly conducting more pre-pay audits, including Medicare Condition of Participation reviews.

Enforcement Issues - GIP

- **HHS OIG Issued report in May 2013 on Hospice GIP Care in the Medicare Program**
  - Longer lengths of stay and greater utilization of GIP care by hospices with inpatient units are issues warranting “further concern.”
- **General Inpatient Care (GIPs)**
  - OIG Medical Record reviews
    - OIG Sent out requests for GIP medical records on May 15, 2013
    - While GIP isn’t high volume, it is high enough that the government is taking a look at it.

Hospice Enforcement Issues

Reality -- every level of hospice care is under scrutiny

- **Routine Home Care**
  - RACs and ZPICs focused on beneficiary hospice eligibility
- **Continuous Care**
  - In March 2012, a large hospice chain agreed to pay $25 million and enter into a 5 year corporate integrity agreement to settle whistle-blower allegations that the company overbilled Medicare by billing for continuous care when only routine hospice care was medically necessary. DOJ filed civil False Claims Act complaint against another large hospice company recently alleging similar misconduct.

Fraud Investigation & Settlement Related to GIP

- Federal *qui tam* lawsuit filed under the False Claims Act
  - Arkansas based hospice settled a *qui tam* suit filed under the False Claims Act for $2.7 million in December 2011 following a criminal investigation.
  - Medical record review revealed that the Hospice billed for GIP when only routine care was necessary.

Federal Regulatory Issues that May Affect Hospice Inpatient Units

- **FY 2014 Medicare Hospice Proposed Rule**
  - Eliminates debility and failure to thrive as primary diagnoses.
    - *Primary diagnosis in IPU – greater scrutiny?*
- **CMS Guidance to States**
  - Recommends state survey and certification agencies put hospices applying to be new Medicare providers in the lowest tier of workload priorities.

State Regulatory Issues

- **Certificate of Need Review for IPUs**
  - 18 states require certificates of need for hospice facilities.
    - AL, AR, CT, FL, HI, KY, MD, MS, NY, NC, OR, RI, SC, TN, VT, WA, WV, DC.

State Regulatory Issues

- **Separate Licensure of Inpatient Units in or associated with Hospitals**
  - If the inpatient unit will be located in an existing facility, beds may need to be decertified from their existing category and the unit may need to be physically separated by a firewall.
  - Hospice facilities owned by the same entity but which are not located on the same property may require separate state licensure and compliance with all applicable design and construction standards.
  - For example, South Carolina regulations specify:
    - *Hospice facilities owned by the same entity but which are not located on the same adjoining or contiguous property shall be separately licensed. S.C. Code Regs. 61-78(103)(G)(5)*
    - *Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity. S.C. Code Regs. 61-78(103)(G)(7)*

State Regulatory Issues

Separate Licensure of Hospice Inpatient Units may not always be required

- e.g., Georgia Hospice Rules permit a single license for multiple hospice locations, including a residential hospice facility, under the hospice's state license:
- Hospital or SNF units licensed separately.

Regulatory Issues
State Staffing Ratio Requirements

- **Some states have staffing ratio regulations for hospice IPUs.**
  - **South Carolina**
    - *Minimum staffing for a hospice facility shall consist of one RN and one additional direct care staff member on duty at all times. Staffing ratios vary depending on the number of patients in the facility's census and the whether it is the 1st, 2nd, or 3rd shift.*
  - **Missouri**
    - *All hospices shall employ qualified staff at the ratio of no less than one for every ten (1:10) patients per shift, per patient unit, 24 hours a day. Staffing personnel shall be on duty at all times on each patient-occupied floor, with no less than two staff personnel in a facility at all times.*
    - *Minimum staff personnel shall be no less qualified than one home health aide or companion/volunteer and one licensed practical nurse.*

Regulatory Issues – Medical Director Services

- **Contracting for Medical Director Services**
  - Most states permit the medical director to be either a direct or contract employee.
  - If a physician has an agreement with a hospice agency to provide medical care and services to hospice patients then Medicare regards them as a hospice medical director when billing for any care provided to patients related to the terminal condition.
  - Billing issues
    - *The physician is paid for administrative services by hospice out of its Medicare per diem*
    - *For direct patient care services, the hospice bills the FI/MAC for the physician's services and can compensate physician.*

Regulatory Issues – Medical Director and "Call" Services

- **Medical Director Compensation Packages**
  - **Higher salary with little or no compensation for patient visits.**
    - The hospice collects the physician service billing proceeds to offset the higher medical director's salary.
  - **Lower salary and the medical director is reimbursed a high percentage of visit reimbursement (e.g., 80% to 90% of collections).**
    - Lower overhead for the hospice and increased incentive for the medical director to visit/provide clinical care to more patients.
- Physician or N.P. call coverage – payment for being available nights and weekends.
  - Importance of Fair Market Value for physician payments

Things to Keep in Mind

- **Take the recent OIG Report with a Grain of Salt**
  - OIG found hospices with inpatient hospice units provide a lot more GIP care…of course they do!
    - Hospices with inpatient units often receive referrals of patients for GIP.
- If your hospice has an inpatient unit, use it but don't *overuse* it…. Scrutiny of medical necessity of GIP on the rise.
  - ensure physicians are knowledgeable on standards – actively dying patient is not sufficient.

Things to Keep in Mind

- **Ensure appropriate use of GIP**
  - GIP is short-term care meant to provide pain control and symptom management that cannot be accomplished in the patient's home setting.
    - Ensure skilled care for this is documented in patient records

- **Dangers of IPU/GIP as a "step-down"** between an acute care hospital and routine care hospice.
    - Also be wary of using GIP care as a mechanism to provide a patient's family with time to prepare (physically, mentally, or emotionally) for the patient to receive routine hospice care at home.

Question & Answer

Thank You!

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