


Getting Ready for 2016

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Subscriber Webinar  
November 2015



**HOSPICE FUNDAMENTALS**  
KNOWLEDGE • EXPERTISE • COMMON SENSE

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Two Key Components of Readiness

1. Ability to identify & prioritize risks
2. Ability to respond to risks

The Good News: An effective compliance framework supports both

OIG Compliance Program, Guidance for Hospices  
<https://oig.hhs.gov/authorities/docs/hospicx.pdf>



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The Two Key Questions



1. What might we expect in 2016?
2. Based on the answer to #1, how can we best allocate scarce resources to meet our compliance needs?



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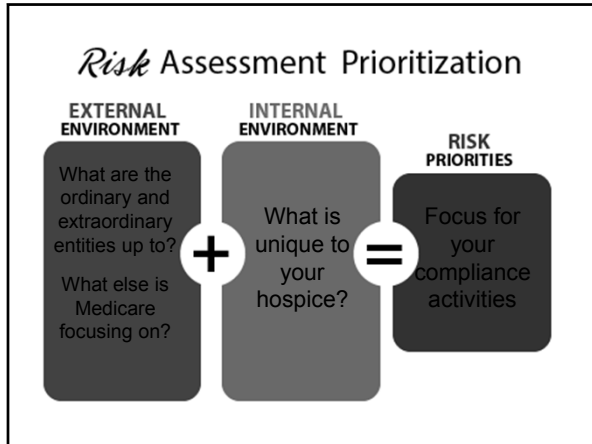
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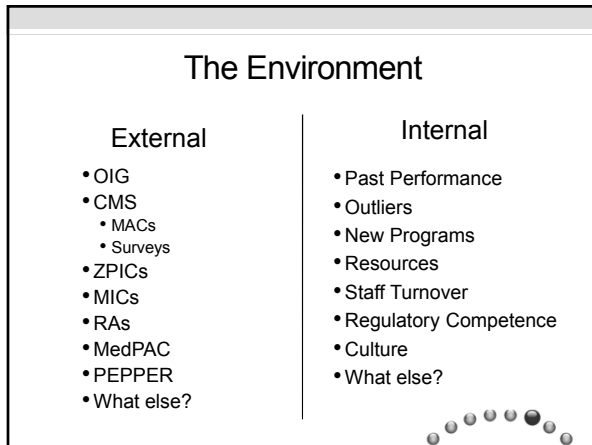
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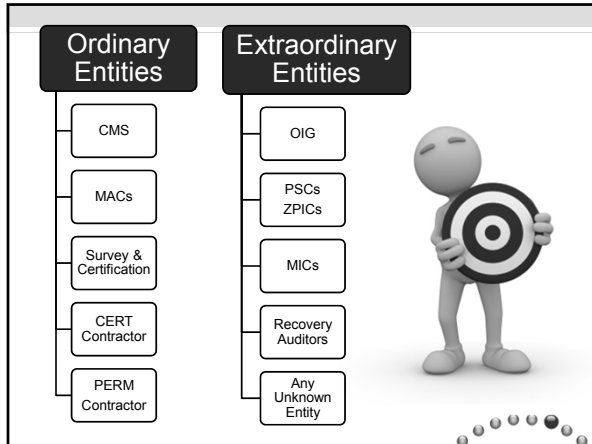
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### Extraordinary Entities Their Common Interests

OIG	<ul style="list-style-type: none"> <li>• Did the services that Medicare or Medicaid paid for meet the requirements for coverage and payment?</li> <li>• If not, why not?</li> <li>• Was there fraud involved?</li> <li>• How much money should be recouped?</li> <li>• What other penalties should be levied?</li> </ul> <p>CMS Compliance Group Interactive Map <a href="http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html">www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html</a></p>
PSCs ZPICs	
MICs	
Recovery Auditors	
Any Unknown Entity	

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### 2015 OIG Reports

Date	Title
1/2015	Medicare Hospices Have Financial Incentives to Provide Care in Assisted Living Facilities
4/2015	New Jersey Claimed Medicaid Hospice Services That Were Not in Compliance with Federal and State Requirements
6/2015	Hospice of New York, LLC, Improperly Claimed Medicare Reimbursement for Some Hospice Services
6/2015	CMS's Reliance on New Jersey Licensure Requirements Could Not Ensure the Quality of Care Provided to Medicaid Hospice Beneficiaries
6/2015	CMS's Reliance on PR's Certification Surveys Could Not Ensure the Quality of Care Provided to Medicare Hospice Beneficiaries by Servicios Suplementarios de Salud, Inc.
6/2015	CMS's Reliance on Accreditation Surveys Could Not Ensure the Quality of Care Provided to Medicare Hospice Beneficiaries by The Community Hospice, Inc.

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**Extraordinary Entities** **OIG FY 2016 Work Plan**

- OIG
- PSCs  
ZPICs
- MICs
- Recovery Auditors
- Any Unknown Entity

From the Introduction:  
 OIG has focused its efforts on identifying and offering recommendations to reduce improper payments, prevent and deter fraud, and foster economical payment policies. Future planning efforts for FY 2016 and beyond will include: additional oversight of hospice care, including oversight of certification surveys and hospice-worker licensure requirements; oversight of Skilled Nursing Facilities' (SNF) compliance with patient admission requirements; and evaluation of CMS's Fraud Prevention System.

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**OIG FY 2016 Work Plan Project: GIP**

Continuing project with plans to

- review the use of GIP
- assess the appropriateness of hospices' GIP care claims and the content of election statements for hospice beneficiaries who receive general inpatient care
- review hospice medical records to address concerns that this level of hospice care is being billed when that level of service is not medically necessary
- review beneficiaries' plans of care and determine whether they meet key requirements
- determine whether Medicare payments for hospice services were made in accordance with Medicare requirements.  
(OEI; 02-10-00491; 02-10-00492; expected issue date: FY 2016; and OAS; W-00-15-35744; various reviews; expected issue date: FY 2016)

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**Some History of the GIP Project**

Providers started getting record requests in April 2013 for claims for services provided in 2012

- Each claim included some days at GIP in the various allowable settings.
- Appeared to be random requests within that group of claims

OIG issued a memorandum report Use of General Inpatient Care in May 2013; used data from 2011 claims

Expect final report to be quite significant

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Also on the OIG's Mind

	Payment	Access & Quality of Care
GIP: Over Utilization	x	
Eligibility / Length of Stay	x	
Live Discharges	x	x
Visits in Days Proceeding Death	x	x
Meeting State Licensure Requirements		x
Cost Shifting	x	
Quality of Surveys		x

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**Extraordinary Entities** PSCs > ZPICs

- OIG
- PSCs ZPICs
  - Remain an active and challenging extraordinary entity in the hospice world
  - Their modus operandi
    - Request medical records and conduct medical review to evaluate the identified potential fraud
    - May also make on-site visits
    - May or may not share what they are looking for or at
    - Utilize sophisticated data mining and analysis techniques
    - May employ extrapolation in determining paybacks
- MICs
  - Good friends with DOJ & law enforcement
  - Teams not always well versed in hospice
- Recovery Auditors
- Any Unknown Entity

PSC: Program Safeguard Contractors  
ZPIC: Zone Program Integrity Contractors  
Transitioning (slowly – it's been underway for years) from PSCs to ZPICs as part of payment reform

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**Extraordinary Entities** Medicaid Integrity Contractors

- OIG
- PSCs ZPICs
  - Similar function to the ZPICs for Medicaid
  - Overall program is the Medicaid Integrity Program (MIP) – operated under jurisdiction of Center for Medicaid & State Operations
- MICs
  - Consists of 3 types of contractors
    - Review MICs
    - Audit MICs
    - Education MICs
  - Not always well versed in hospice
- Recovery Auditors
- Any Unknown Entity

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**Extraordinary Entities**      **Recovery Audit Program**

- OIG
- PSCs  
ZPICs
- MICs
- Recovery Auditors
- Any Unknown Entity

- The bounty hunters of the system; paid a % of identified over or underpayments instead of flat fee
- Projects must receive approval from CMS before initiation
- Currently four RACS; each state assigned to one
- 5<sup>th</sup> national contractor for home health, hospice and DMEPOS was to have come on line in 2014; will we see it in 2016?

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**Extraordinary Entities**      **Medicaid RAs**

- OIG
- PSCs  
ZPICs
- MICs
- Recovery Auditors
- Any Unknown Entity

- Function in almost the same way as the Medicare RACs
- Although CMS encourages states to establish a process similar to the Medicare New Issue Review Board, there is no such requirement
- Final rule focused on flexibility for the states so little consistency
- Some activity across the country
- Contractors don't always appear to fully understand hospice care

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**Extraordinary Entities**      **Summing Up**

- OIG
- PSCs  
ZPICs
- MICs
- Recovery Auditors
- Any Unknown Entity

- Activities will continue - the days of "it won't happen to us" are long gone
- Keep your fundamentals strong
- What would you do if an extraordinary entity showed up unannounced at your door?
- Know when to call a healthcare attorney
- Read: Unexpected Government Investigations: What to Do When the Government Visits Your Health Care Organization

<http://www.reinhartlaw.com/Publications/Documents/ea070112%20HC.pdf>

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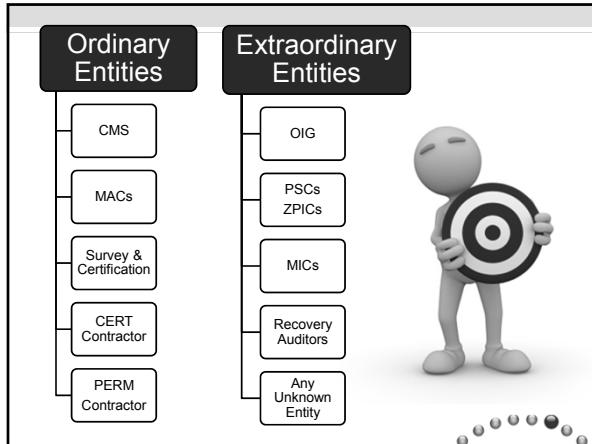
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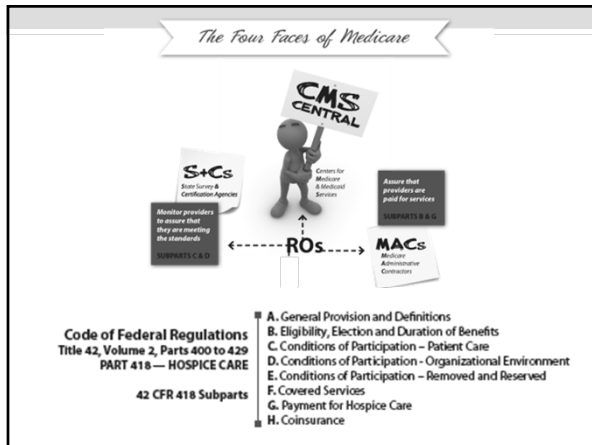
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How CMS Spent 2015

	Payment & Coverage	Quality of Care
Introducing the first step in hospice payment reform & sharing more troublesome data gathered by contractors ABT Associates and Acumen LLC in the proposed and final FY 2016 Wage Index rules	X	X
Expanding coding expectations yet again – this time to include all diagnoses on claims regardless of relatedness	X	X
Transitioning to ICD – 10 on October 1, 2015	X	
Getting the Q3 year certification survey cycle underway		X

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### Abt Report Areas

- Hospice Drug Costs & Part D Billings
- Part B Billing
- RN & Social Work Visits Near Death
- Location of Care
- Levels of Care
- Live Discharges

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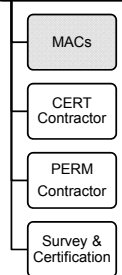
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### Ordinary Entities

Medicare Administrative Contractors

- Technical Areas (first thing reviewed on every chart – includes plan of care)
- Eligibility
- Length of Stay
- Non-Cancer Diagnoses
- General Inpatient Level of Care

• Watch for specific areas for your MAC



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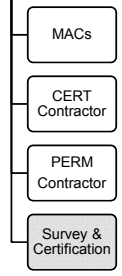
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### Ordinary Entities

Survey & Certification

- Finally – more surveys! IMPACT legislation includes requirement for Medicare survey no less than every 3 years
- Process well underway – each state gets to choose how they get the work done
- Remember OIG reports addressing quality of surveys – anecdotal reports of more condition level deficiencies
- S&C reads narratives attached to proposed and final rules too



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graph TD; OE[Ordinary Entities] --- MACs[MACs]; OE --- CERT[CERT Contractor]; OE --- PERM[PERM Contractor]; OE --- S&C[Survey & Certification]
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**Medicare Payment Advisory Commission**

- Independent Congressional agency established by BBA 1997
- The Thinkers – no regulatory authority
- Issue reports to Congress in March and June
- Meeting transcripts available (and searchable)
- The majority of the changes we have seen in the past few years are a direct result of MedPAC recommendations
- Pretty quiet in 2015 – most of the changes they have suggested have been approved and implemented

<http://medpac.gov/>



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**Other Activities - PEPPER**

Q4 FY 2014 Live Discharge PEPPER issued in April 2015

- Program for Evaluating Payment Patterns Electronic Report
- Information only – but the same data is available to all regulatory and investigatory entities
- Expanded to include 6 areas
- May only be accessed by hospice leader or compliance officer



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**Other Activities - HIPAA**

- Office of Civil Rights continues preparations to get an on-going auditing program underway
- Will include covered entities and business associates
- What does this mean for hospices?



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### Other Activities: Part D Recoupment Requests

- Providers are starting to get recoupment letters from Part D drug plans again
- Ranging from 2011 through 2015
- Most appear to be for the four categories of meds expected to be covered by hospice absent prior authorization
- Still learning more about what is going on and will update as more information is available

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### Other Activities: NH Proposed Rules

- Proposed rule released July – rewrite of LTC Requirements of Participation
- Some troublesome areas for hospices – primarily related to broad definition of “psychotropic” drugs and limitations on use
- Over 2,000 comments received October deadline
- Although push to get final rule released, not clear if they will be seen in 2016
- Provider industry pushing for a five year phase-in implementation schedule

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### A Hospice Fundamentals Observation

- Providers are still struggling with the certification and recertification processes.
- We’ll be addressing them in the April subscriber webinar
- Consider if they need to be added to your compliance work plan – process problems can be extraordinarily costly

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### Where Did the Darts Cluster?

<p>The Review of Activities</p> <ul style="list-style-type: none"><li>• Eligibility / LOS</li><li>• General Inpatient LOC</li><li>• Coding</li><li>• Live Discharges</li><li>• More Surveys</li><li>• Cost Shifting</li></ul>	<p>On the Horizon</p> <ul style="list-style-type: none"><li>• CMS continued push for expansion of financial and care management responsibilities</li><li>• Release of OIG GIP report</li><li>• HIPAA audits</li></ul>
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### Readiness Component #2

1. Ability to identify & prioritize risks
2. Ability to respond to risks

Once a risk area is identified

- What regulations guide the area?
- How compliant are current operations?
- What changes need to be made?
- How will effectiveness of changes be assessed?
- How will individual compliance with changes be assessed?



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### Summing It All Up

1. Assess external and internal risks
2. Prioritize
3. Evaluate readiness using the Path of the Prudent Hospice
4. Establish work plan
5. Adjust plan as needed
6. Let Hospice Fundamentals know what areas are most challenging for you



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November 6, 2015

## **BEWARE THE "FRIENDLY" ZPIC LETTER**

Zone Program Integrity Contractors (ZPICs) are developing new strategies—so should hospices. Recently, hospices have been receiving a letter from their ZPIC that purports to merely inform the hospice about a complaint and provide "education." These letters do not seek records, do not announce an overpayment determination, and do not require the hospice to take any action, but hospices should think twice about any letter from a ZPIC and this kind of letter is no different. ZPICs are focused on identifying fraud, waste and abuse, and are looking for ways to build cases against hospices. These letters can fit into that strategy. Below we highlight additional information about these letters and present an action plan for hospices that receive these "friendly" letters.

### **What Is in the Letter?**

In these notice and education letters, the ZPIC informs the hospice that a complaint was made and provides a brief, often vague description of the complaint. The bulk of the letter contains "education" in the form of lengthy quotations from federal statutes, hospice regulations or CMS guidance. The letter concludes with a description of additional significant actions that could be taken against the hospice if educational efforts fail to correct the alleged problem, including (1) additional monitoring of the hospice, (2) withholding of future payments from Medicare (3) civil monetary penalties, and (4) exclusion from Medicare. However, the letter does not explicitly require the hospice to take any specific action.

### **Who Is Sending the Letter?**

AdvanceMed Corporation, an NCI company, appears to be at the forefront of issuing these letters. Moreover, AdvanceMed was recently awarded the contract for Zone 3 (Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio and Wisconsin), previously held by Cahaba Safeguard Administrators (Cahaba), and hospices that previously received document requests and onsite interviews by Cahaba are now receiving follow-up contact from AdvanceMed. Hospices should also be vigilant about receiving these letters from other ZPICs, such as Safeguard Services (SGS) and Health Integrity.

### **What Should a Hospice Do?**

Based on the particular circumstances involving your letter, consider taking these steps:

- **Pay Attention.** Know which ZPICs may be sending correspondence, and confirm that hospice staff knows who the applicable ZPIC is and who at the hospice should be alerted to ZPIC communications. If you receive the notice and education letter described in this Hospice Minute, which does not explicitly require any action on the hospice's part, don't simply file it away.
- **Consider Responding.** Depending on the letter's contents, evaluate whether to respond to the ZPIC. If the description of the complaint is vague, consider writing a brief letter, crafted with the assistance of legal counsel, to request more information about the complaint. Sending such written communication to the ZPIC can demonstrate the hospice's prompt diligence in seeking to address the complaint that triggered action by the ZPIC in the first place. A response that seeks further details about the complaint may also result in the ZPIC providing additional information that will help the hospice plan and conduct an internal investigation, as described below.

- Conduct Internal Investigation. Because the hospice is notified of a complaint through these letters, and a failure to educate can result in severe adverse actions, work with legal counsel on developing a plan for investigating the complaint. This investigation should be conducted under attorney-client privilege. A hospice attorney or lawyer can assist with defining the scope of the investigation. Taking appropriate action, based on the investigation's results, demonstrates the hospice's efforts to address any alleged issues.

This *Hospice Minute* provides general information and should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.

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# Risk Assessment Prioritization Worksheet

External  
Environment



Internal  
Environment



Risk  
Priorities

