Tying Recent OIG Enforcement Trends/Report Findings into Practical Actions

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About The Speaker

acevedo consulting incorporated

Christopher P. Acevedo has nearly 20 years of health care experience and is the Chief Operating Officer for Acevedo Consulting. He has a particular expertise in building palliative care programs, chart audits, compliance & education relative to physician documentation and coding. Chris has assisted clients nationwide with these and many other organizational needs and his experience in operational management brings our clients invaluable expertise in the operational aspects of organizations' billing processes and identifying areas for potential improvement. Through the firm, Chris has also served as the Independent Review Organization (IRO) representative for hospices in accordance with their Corporate Integrity Agreements (CIA) with the OIG.

Acevedo Consulting staff serve as a consultants to the NHPCO and AAHPM when physician compliance, billing and coding issues arise. As such Chris has also conducted several educational webinars for the industry, including for state hospice and palliative care organizations.

Christopher is the Heathcare Compliance Officer for Barry University, has served as an instructor at Florida Atlantic University teaching the regulatory compliance modules of FAU's Certificate in Medical Business Management program, and is a member of multiple CMS MAC Provider Outreach and Education Advisory Groups. Additionally, he is the author of the Hospice Physician Service Billing Guide commissioned by the NHPCO.

He is a frequently sought after speaker as he possesses the unique perspective of avoiding risk and liability while optimizing reimbursement in the highly regulated health care industry.

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This presentation is a general summary that explains certain aspects of the Medicare Program and other reimbursement and compliance information, but is not a legal document. The official Medicare Program provisions are contained in the relevant laws, regulations, and rulings.

Objectives

- Identify Common Trends in OIG Reporting
- Discuss Recent OIG Enforcement Actions
- Leverage Best Practice Actions to Demonstrate a Culture of Compliance

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Why is the OIG so Focused on Hospice?

- The Office of Inspector General (OIG) has identified significant vulnerabilities in the Medicare hospice benefit and found that hospices did not always provide needed services to beneficiaries and sometimes provided poor quality care.
- Bad Actor Trickle Down Effect

Recent OIG Reports: Vulnerabilities in Hospice Care

- 2016-2019
  - **Safeguards Must Be Strengthened To Protect Medicare Hospice Beneficiaries From Harm**
  - **Significant Increase in Hospice Utilization**
  - **Hospices Should Improve Their Election Statements and Certifications of Terminal Illness**
  - **Hospices Inappropriately Billed Medicare for General Inpatient Care**
  - **Registered Nurses Did Not Always Visit Medicare Beneficiaries' Homes At Least Once Every 14 Days To Assess The Quality of Care and Services Provided by Hospice Aides**

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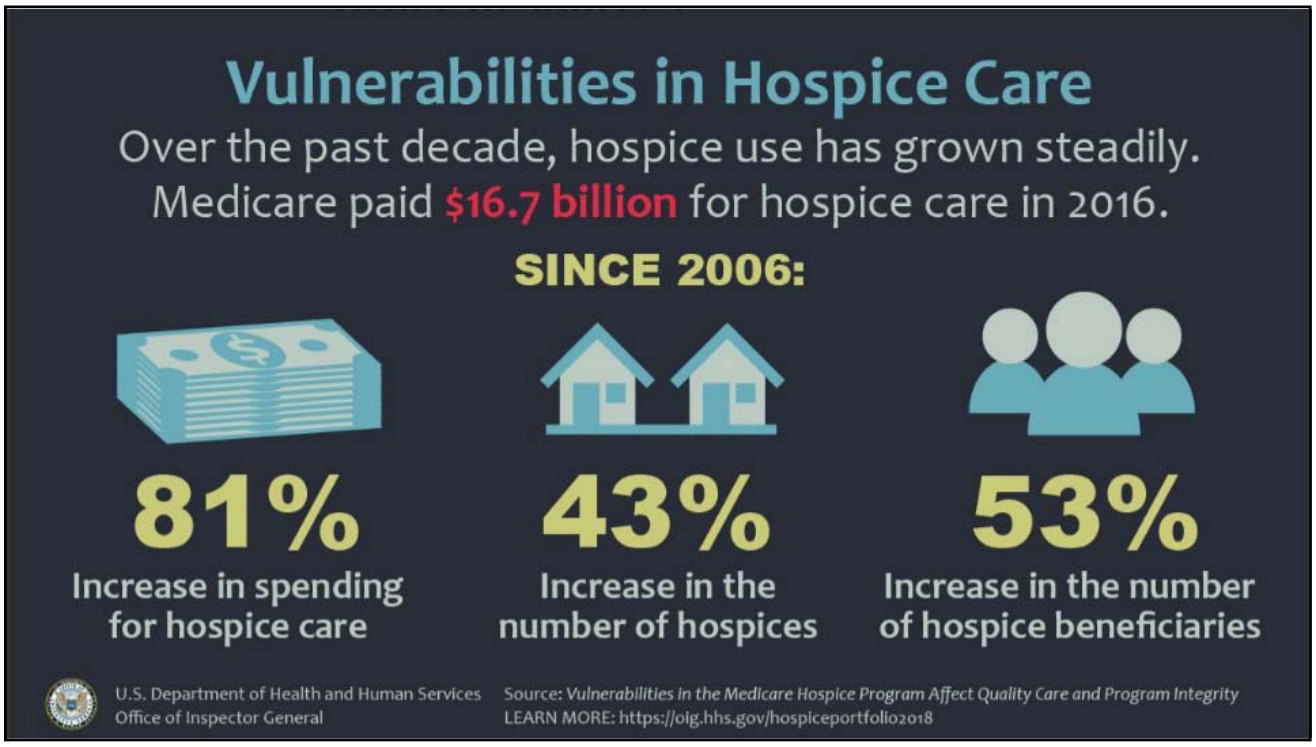

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Vulnerabilities in Hospice Care

Medicare should provide more information to the public, especially beneficiaries, about hospice performance so consumers can **effectively compare** hospice providers.

U.S. Department of Health and Human Services
Office of Inspector General

Source: *Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity*
LEARN MORE: https://oig.hhs.gov/hospiceportfolio2018

Vulnerabilities in Hospice Care

CASE EXAMPLE:

Nurses allegedly gave high doses of drugs, like morphine, regardless of whether patients needed it, to justify the higher hospice payments. Some of these excessive dosages resulted in **significant injury or death.**

U.S. Department of Health and Human Services
Office of Inspector General

Source: DOJ Press Release: https://www.justice.gov/usao-ndtx/pr/sixteen-individuals-charged-60-million-medicare-fraud-scheme
LEARN MORE: https://oig.hhs.gov/hospiceportfolio2018

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What did they find?- Continued

- Beneficiaries have limited access to hospice quality of care information. Centers for Medicare & Medicaid Services (CMS) should improve its Hospice Compare website so beneficiaries can be more informed about the quality of care provided by each hospice.
- Most hospices that participate in Medicare have at least one deficiency in the quality of care they provide, and hundreds are poor performers. CMS should educate hospices about common deficiencies and increase oversight of hospices with a history of serious deficiencies.
- Hospice beneficiaries face barriers to making complaints, and hospice and surveyor reporting requirements are limited. CMS should make it easier to file complaints and strengthen hospice and surveyor reporting requirements.
- Hospices with patient harm cases do not always face serious consequences from CMS. CMS should seek statutory authority to extend beneficiary protections found in other health care settings to hospices and ensure remedies are available to address poor performers.

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OIG Recommendations to CMS

- 7 Categories w/ 15 Specific Recommendations
  - Strengthen the survey process to better ensure that hospices provide beneficiaries with needed services and quality care
  - Seek statutory authority to establish additional remedies for hospices with poor performance
  - Develop and disseminate additional information on hospices to help beneficiaries and their families and caregivers make informed choices about their care
  - Educate beneficiaries and their families and caregivers about the hospice benefit
  - Promote physician involvement and accountability to ensure that beneficiaries get appropriate care
  - Strengthen oversight of hospices to reduce inappropriate billing
  - Take steps to tie payment to beneficiary care needs and quality of care to ensure that services rendered adequately serve beneficiaries' needs, seeking statutory authority if necessary

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OIG Recommendations to CMS

- Analyze claims data to inform the survey process
- Analyze deficiency data to inform the survey process
- Seek statutory authority to establish additional, intermediate remedies for poor hospice performance
- Develop other claims-based information and include it on Hospice Compare

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OIG Recommendations

- Include on Hospice Compare deficiency data from surveys, including information about complaints filed and resulting deficiencies
- Work with its partners, such as hospitals and caregiver groups, to make available consumer-friendly information explaining the hospice benefit to beneficiaries and their families and caregivers
- Ensure that a physician is involved in the decisions to start and continue general inpatient care
- Analyze claims data to identify hospices that engage in practices or have characteristics that raise concerns

OIG Recommendations

- Take appropriate actions to follow up with hospices that engage in practices or have characteristics that raise concerns
- Increase oversight of general inpatient care claims and focus particularly on general inpatient care provided in SNFs, given the higher rate at which these stays were inappropriate
- Implement a comprehensive prepayment review strategy to address lengthy general inpatient care stays so that beneficiaries do not have to endure unnecessarily long periods of time in which their pain and symptoms are not controlled
- Develop and execute a strategy to work directly with hospices to ensure that they are providing drugs covered under the hospice benefit as necessary and that the cost of drugs covered under the benefit are not inappropriately shifted to Part D

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OIG Recommendations

- Assess the current payment system to determine what changes may be needed to tie payments to beneficiaries' care needs and quality of care to ensure that services rendered adequately serve beneficiaries' needs
- Adjust payments based on these analyses, if appropriate, to ensure that the payment system is aligned with beneficiary needs and quality of care
- Modify the payments for hospice care in nursing facilities

OIG Enforcement Actions

- Caris Agrees to Pay $8.5 Million to Settle False Claims Act Lawsuit Alleging That it Billed for Ineligible Hospice Patients (June 25, 2018; U.S. Department of Justice)
- Health and Palliative Services of the Treasure Coast, Inc., The Hospice of Martin and St. Lucie, Inc., and Hospice of the Treasure Coast, Inc. Paid $2.5 Million to Settle False Claims Allegations (May 18, 2018; U.S. Attorney; Southern District of Florida)
- Hospice Company and Owner Agree to Pay $1.24 Million to Settle Two False Claims Act Whistleblower Lawsuits (February 8, 2018; U.S. Attorney; Western District of Pennsylvania)
- Chemed Corp. and Vitas Hospice Services Agree to Pay $75 Million to Resolve False Claims Act Allegations Relating to Billing for Ineligible Patients and Inflated Levels of Care (October 30, 2017; U.S. Department of Justice)

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OIG Enforcement Actions

- Caris Agrees to Pay $8.5 Million to Settle False Claims Act Lawsuit Alleging That it Billed for Ineligible Hospice Patients (June 25, 2018; U.S. Department of Justice)
- The settlement resolves allegations that Caris Healthcare admitted and recertified patients for hospice care that were ineligible for the hospice benefit. The government's complaint alleged that Caris admitted patients whose medical records did not support a terminal prognosis. The government's complaint further alleged that when Caris was alerted to the ineligibility of these patients—via internal audits, concerns raised by its Chief Medical Officer, and recommendations of its nurse employees who actually examined the patients—Caris not only continued to submit hospice claims to Medicare for the patients, but also **took no meaningful action** to determine whether it had previously received improper payments for these and other patients that should have been returned to Medicare. The settlement resolves allegations filed in a lawsuit by Barbara Hinkle, a registered nurse who formerly worked for Caris Healthcare. The whistleblower's share will be $1,402,500.

OIG Enforcement Actions

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- The allegations settled in this case arose from a lawsuit filed by whistleblowers, John Simons, M.D. and Lewis Cook, M.D.. The whistle blowers in this matter were medical doctors formerly employed by the defendants. The whistle blowers' complaint alleged that the defendants billed for patients who were not terminally ill and thus did not qualify for the hospice benefit. The doctors received $476,373.73 from the announced recovery

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Just last week – Posted May 18, 2021

- **Medicare Hospice Provider Compliance Audit: Alive Hospice, Inc.**
(A-09-18-03016)

  Alive received Medicare reimbursement for hospice services that did not comply with Medicare requirements. Of the 100 hospice claims in our sample, 76 claims complied with Medicare requirements. However, the remaining 24 claims did not comply with the requirements.

  Improper payment of these claims occurred because Alive's policies and procedures were not effective in ensuring that the clinical documentation it maintained supported the terminal illness prognosis and that the appropriate level of care was provided. On the basis of our sample results, we estimated that Alive received at least $7.3 million in unallowable Medicare reimbursement for hospice services.

Just last week – Posted May 18, 2021

- **Medicare Hospice Provider Compliance Audit: Ambercare Hospice, Inc.**
(A-09-18-03017)

  Ambercare received Medicare reimbursement for hospice services that did not comply with Medicare requirements. Of the 100 hospice claims in our sample, 48 claims complied with Medicare requirements. However, for the remaining 52 claims, the clinical record did not support the beneficiary's terminal prognosis.

  Improper payment of these claims occurred because Ambercare's policies and procedures were not effective in ensuring that the clinical documentation it maintained supported the terminal illness prognosis. On the basis of our sample results, we estimated that Ambercare received at least $24.6 million in unallowable Medicare reimbursement for hospice services.

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What can we do?

- 7 Categories of OIG Recommendations
  - **Education & Outreach**
    - **Develop and disseminate additional information on hospices to help beneficiaries and their families and caregivers make informed choices about their care**
    - **Educate beneficiaries and their families and caregivers about the hospice benefit**
  - **Plans of Care**
    - **Strengthen the survey process to better ensure that hospices provide beneficiaries with needed services and quality care**
    - **Promote physician involvement and accountability to ensure that beneficiaries get appropriate care**
  - **Audit & Compliance**
    - **Strengthen oversight of hospices to reduce inappropriate billing**
    - **Take steps to tie payment to beneficiary care needs and quality of care to ensure that services rendered adequately serve beneficiaries' needs, seeking statutory authority if necessary**
  - This one is on CMS!
    - Seek statutory authority to establish additional remedies for hospices with poor performance

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Education & Outreach

- I know… I know – you already do this!
  - But focus on the specifics of the findings
    - In-person review of your admissions folks
      - Are they clearly explaining the benefit. Both restrictions and rewards!
    - Is your fate in another's hands?
      - Do you have a facility's staff doing the "heavy lifting?"
    - Can you help prevent a perceived service failure?
      - Does the loved one of an impaired provider actually understand the services you provide under the hospice benefit?

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Individuality of Plans of Care

- Are your teams truly addressing (and reflecting) individual patient needs?
  - Audit your IDT meetings
    - Use an objective tool to measure effectiveness
  - Visit strings/documentation all the same "3x/wk for 2wks"
  - Physician engagement
    - Are they on their phone worried about a competing priority?
    - Do they engage in teachable moments with the team?
  - How often does leadership
    - visit a patient/family (not related to a service recovery/failure)?
    - Make field visits with staff (not related to performance issues)?

Audit & Compliance

- OIG findings and actions should be a blueprint for you compliance workplan
  - As should recent MAC and Safeguard trends
- Compliance and Quality departments should be deeply engaged with your Education department
- Leadership should be engaged in the field
  - Proactive intervention provides for a much more restful night sleep than reaction based firefighting!

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Audit & Compliance

- Workplan should include, at minimum:
  - Adherence with new election requirements (where do you think CMS got that idea)
  - Level of care reviews
    - SNF GIP
  - Part D relatedness reviews
  - PEPPER Report & Hospice Compare correlation
  - Care Plan
    - Individualization & Adherence

Actions of the Prudent Hospice™

- ✓Assess the Quality of Your Plans of Care
- ✓Audit Your IDTs
- ✓Complete an Annual Compliance Risk Assessment
- ✓Develop a Work Plan and Adjust as Needed
  - ✓Be sure to include eligibility, POC services, and payment accuracy
- ✓Document the Positive Findings of Your Reviews As Well

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Questions????

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