

Eli's Hospice Insider

Audits: Number Of OIG Audit Reports On Hospices Hits Double-Digits

Reviewers are overriding physicians' judgment, audit targets charge.

The two nonprofit hospices in the OIG's latest audit reports are calling the watchdog agency on its medical review transgressions.

The HHS Office of Inspector General has issued a long string of audit reports stretching back to last November, in which it has raked hospices over the coals - chiefly over terminal illness - to the tune of tens of millions in estimated overpayments.

On July 8 and 12, respectively, the HHS Office of Inspector General issued its tenth and eleventh hospice audit reports since November 2020. They target two longstanding nonprofits - Mission Hospice & Home Care Inc. in San Mateo, California, and Partners In Care Inc. in Bend, Oregon. Both hospices were founded before the Medicare hospice benefit, in 1979, they point out in their response letters to the report.

An OIG-contracted medical review examined a 100-claim sample from each hospice. For Mission, the reviewer determined that 34 of the sampled claims were not compliant with Medicare billing rules - 33 based on terminal prognosis, and one based on level of care. Since Mission had a universe of 6,142 claims totaling \$37 million in payments during the October 2015-through-September 2017 audit period, extrapolation of the findings results in an overpayment estimate of "at least \$10.5 million in unallowable Medicare reimbursement for hospice services," the OIG says.

For PIC, the reviewer found 47 of the sampled claims out of compliance - 43 based on terminal illness and four based on level of care. Given the hospice's universe of 5,779 claims totaling \$27.3 million for the January 2016-through- December 2017 audit period, extrapolation determines an overpayment of "at least \$11.2 million," the OIG claims.

The non-profit hospices were quick to excoriate the reviewers' methods and the findings they led to.

"The Medical Review Contractor failed to adhere to the law and standards of practice when reviewing PIC's claims," the hospice's attorney, **Bryan Nowicki** with Husch Blackwell in Madison, Wisconsin, condemned in the 32-page response letter to the report. "The Medical Review Contractor repetitively and rotely cited clinical criteria that are not legally mandatory and cherry-picked evidence from the medical record without a holistic consideration of each patient's condition, without taking into account the hospice physicians' credible clinical judgments," Nowicki said elsewhere in the letter.



Furthermore: "The reviewer simply listed criteria without providing any explanation as to how that criteria relates to that particular patient's unique clinical situation," the PIC counsel charged. "This failure to apply the correct legal principles and connect them to the patients results in arbitrary and capricious determinations by the OIG."

Mission's 14-page response letter penned by attorney **Howard Young** with Morgan Lewis in Washington, D.C., hit on many of the same points. The "IMRC medical reviewers used a rigid, post-hoc approach to determine hospice eligibility under the Medicare benefit and largely ignored the critical role of the hospice physicians' reasonable clinical belief that the beneficiaries were terminally ill at the time they completed the certifications of terminal illness," Young protests in the letter.

The "reviewers' findings were produced based upon a legally flawed review methodology," the Mission attorney insists. They "applied an overly proscriptive approach as to what the Medicare hospice benefit requires to support a terminal prognosis."

Both hospices list multiple examples of botched determinations by the OIG-contracted reviewer. For example, PIC offers a case where the contractor determined a claim noncompliant for a Parkinson's patient who died about five months after admission, based on terminal illness. In addition to contradicting the record, "the Medical Review Contractor's claim that [the patient] did not demonstrate certain symptoms, such as recurrent, intractable infections or multiple stage III/ IV pressure ulcers, ignores the various other relevant symptoms this patient experienced and that contributed to his terminal prognosis," the letter protests.

Both hospices also addressed the AseraCare federal court decision requiring appropriate deference to the certifying physician's clinical judgment. "Embracing the IMRC's findings when they run counter to the intended purpose of Medicare hospice coverage will not serve to protect the Medicare hospice benefit, but rather will perpetuate a legally faulty hospice documentation review standard," Young maintains in the Mission letter.

Audited Hospices Knock Reviewer Qualifications

PIC didn't pull punches in its letter. "The OIG's Draft Report is indicative of an overzealous medical review contractor with limited or no experience with hospice care," Nowicki criticizes.

"The Medical Review Contractor's decisions for these patients ... are not supported by the medical records, fail to apply fundamental principles of hospice medicine as recognized by the medical community, and fail to include citation to any relevant medical literature," he continues in the Mission response letter. "The Medical Review Summaries use the same or similar boilerplate language for each claim at issue, which is indicative of the Contractor's failure to apply the appropriate eligibility and level of care standards and thoroughly review the medical records." That leads to a "results-oriented outcome approach in which the Contractor cherry-picked discrete bits of information to support its denials while disregarding other facts in the record supporting the patients' terminal prognoses," the letter blasts.

Further, PIC's excellent history and standing in the community "reveals the OIG's conclusions and recommendations to be anomalous and suspect," Nowicki says.

Both letters take aim at the OIG's sampling and extrapolation policies and procedures as well. "Given that Mission, like most hospices, serves mostly Medicare beneficiaries, the effect of extrapolation of a 100 claim sample in these OIG audits has a disproportionate and punitive effect on the hospice," Young insists in the hospice's letter.

"The OIG's statistical methodology was fundamentally flawed, and the extrapolated overpayment amount is statistically invalid," Nowicki concludes in PIC's letter.

In the end, Mission agrees with seven of the 34 claims the OIG determined were noncompliant. PIC agreed with two of the 47 claims deemed noncompliant.

The OIG maintains its findings in both cases were valid.

Note: The 40-page audit report for Mission is at <https://oig.hhs.gov/oas/reports/region9/91803009.pdf> and the 59-page report for PIC is at <https://oig.hhs.gov/oas/reports/region9/91803024.pdf>. A list of all the OIG's audit reports by date is at <https://oig.hhs.gov/reports-and-publications/oas/cms.asp>.