

## Eli's Hospice Insider

### Audits: OIG Wants Nonprofit Hospice To Repay \$42 Million

#### Medical reviewer denies claims for patients who died.

Many of the problems hospice claims undergo in medical review are front and center in a new HHS Office of Inspector General audit.

**Recap:** Since November 2020, the OIG has issued 11 reports on audits of individual hospice providers. Most of those audits found high rates of noncompliance for the sampled claims. Nine of the 11 audits came out in 2020 and 2021.

In its latest report, the OIG targets the Hospice of Palm Beach County Inc. in West Palm Beach. Of the 100 reviewed claims from the April 2017-through-March 2019 audit period, the OIG finds 40 noncompliant with Medicare rules.

**The breakdown:** An independent medical review contractor judged that the records for 30 of the claims didn't support the patient's terminal prognosis, for nine of the claims didn't support the level of care, and for three of the claims didn't support Service Intensity Add-on (SIA) payments. (Two claims contained more than one deficiency.)

"On the basis of our sample results, we estimated that HPBC received at least \$42.3 million in improper Medicare reimbursement for hospice services," the report says. That's based on the universe of 37,121 claims totaling \$149.8 million for the audit period.

The OIG recommends that HPBC refund the portion of the whopping \$42.3 million overpayment that hasn't timed out and "identify, report, and return" any other overpayments since then, among other actions.

HPBC doesn't take the assessment lying down. In a response letter to the OIG draft report that is at times blistering, the hospice (via its counsel, **Bryan Nowicki** at law firm Husch Blackwell) takes apart the OIG's claims.



HPBC emphasizes its long nonprofit history (the hospice was founded in 1978, before the Medicare hospice benefit); its experienced, qualified and respected leadership including board members; its wide variety of venerable referral sources; and its comprehensive compliance plan including frequent training, among other aspects.

"If OIG's conclusion were correct, it would mean that the clinical judgment of over 28 different certifying physicians, who personally treated the patients and had absolutely no incentive to improperly admit them for hospice care, was incorrect," the letter says. "Such conclusion lacks credibility." Many of the docs who certified the patients at issue "have over a decade (or two) of hospice experience, are Board-certified in Hospice and Palliative Care Medicine, and are Fellows in the American Academy of Hospice and Palliative Medicine," HPBC stresses.

The letter includes multiple examples of cases where the medical review contractor got it wrong, including two patients who actually died during the period of the audited claim. And "of the 30 patients denied based on eligibility, two were over 100 years old, 14 were ages 90-99, and nine were between 86-89 years old," it notes.

Among other info, HPBC offers its PEPPER data as proof of its general program compliance. "With respect to long lengths of stay, HPBC's PEPPER report ... showed that only 10.1 percent of its patients had a long length of stay, putting HPBC in the 19.8 percentile nationwide," the letter notes.

HPBC also takes aim at the reviewer. An independent physician review for the hospice "has expressed concern over the apparent lack of understanding of hospice medicine reflected in the Medical Review Contractor's assessments," the letter notes. "The Contractor's assessments are misleading, incomplete, focus on irrelevant data points, and, most importantly, fail to provide any explanation regarding how those data points relate to each patient's prognosis."

HPBC knocks the OIG for "not independently request[ing] from, nor verif[y]ing, proof of the qualifications of the physicians or clinicians used by its Medical Review Contractor to review hospice claims."

The 33-page response letter also touches on the Aseracare federal court decision and objections to statistical sampling and extrapolation methodology.

HPBC refuses to concede that it owes any overpayments. However, it does agree to repay some SIA funds that it claimed occurred in part due to "a Palmetto system error and EMR system error."

The OIG denies HPBC's accusations without much specificity. "After reviewing HPBC's comments, we maintain that our findings and recommendations are valid," it says.

Note: The 62-page report is at <https://oig.hhs.gov/oas/reports/region2/22001001.pdf>.