

## Eli's Hospice Insider

### Audits: Yet Another Hospice Audit Assesses Whopping Overpayment

#### **Alleged terminal prognosis shortfalls lead to \$3.3 million assessment.**

The HHS Office of Inspector General continues to hammer on hospices, this time targeting a Fairfield, California provider.

An OIG reviewer scrutinized a 100-claim sample from Professional Healthcare at Home, doing business as Kindred Hospice. Professional/Kindred received Medicare reimbursement of \$20.3 million for hospice services provided from April 1, 2016, through March 31, 2018, the audit period.

The reviewer determined that 21 of the 100 claims did not comply with Medicare billing rules - 20 based on terminal prognosis and one based on a missing face-to-face physician encounter. Using extrapolation, the OIG estimates Medicare overpaid Professional/Kindred \$3.3 million for the period.

In a 14-page response letter, Professional/Kindred's law firm, Bass Berry & Sims, asserts that "the OIG's findings with respect to the lone issue addressed - documentation of terminal prognosis - are both legally and factually flawed. Courts have recognized a difference in two physicians' clinical judgments cannot render the certifying physician's judgment invalid."



**Plus:** "The OIG's medical reviewer erred by consistently relying on only a limited portion of the patient's medical record to assess the certifying physician's terminal prognosis, which was based on a full assessment of the patient's complete medical condition," the response letter insists. "That error renders elevating the OIG's medical reviewer's judgment above the clinical judgment of the certifying physician all the more inappropriate."

The OIG reviewer also incorrectly used Local Coverage Determination criteria; and the OIG failed to show the reviewer was qualified to conduct the audit, the Bass Berry & Sims letter charges. Finally, the letter criticizes the OIG's statistical sampling and extrapolation methodology.

The OIG "maintain[s] that our finding and recommendations are valid," according to the report.

Note: The 38-page report is at [www.oig.hhs.gov/oas/reports/region9/91803028.pdf](http://www.oig.hhs.gov/oas/reports/region9/91803028.pdf).