

Eli's Hospice Insider

Fraud & Abuse: GAO Takes Its Turn To Criticize Hospice Surveys

Surveyors should look at live discharge rate, new report urges.

More evidence that the feds consider hospice a fraud-prone industry has arrived, this time in the form of a **Government Accountability Office** report.

Like with a pair of **HHS Office of Inspector General** reports released this summer, a new GAO report calls into question Medicare's oversight of hospices via surveys. Unlike the earlier OIG reports, the GAO document does not include survey horror stories such as patients with maggot-infested wounds or gangrenous limb amputations after wound care neglect, which grab national headlines (see Eli's Hospice Insider, Vol. 12, No. 8).

"Thankfully, the most recent report doesn't include another 'parade of horrors,'" says Washington, D.C.-based healthcare attorney **Elizabeth Hogue**.

The GAO report looks at current Hospice Quality Reporting Program quality measures, noting that for- and nonprofits had comparable scores on the seven measures. The data shows that hospices in general performed well on the QMs, points out attorney **Robert Markette Jr.** with **Hall Render** in Indianapolis.

GAO staff found bigger differences between profit types on "potential indicators of quality" it generated from interviewing a "sample of researchers" and reviewing "relevant research studies," according to the report released Nov. 14. Those indicators were:

- live discharge rate, and
- visits in the last three days of life.

A high live discharge rate "could indicate dissatisfaction with care leading to the beneficiary's decision to leave the hospice provider," the GAO argues. Providing visits in the last three days of life, "a critical time in providing quality care," can represent a hospice's "medical and emotional support" in that time.

"For-profits had higher rates of live discharges than nonprofits, with 22.1 percent of beneficiaries served by for-profits being discharged alive compared to 12.0 percent of beneficiaries served by non-profits in 2017," GAO researchers found. "This disparity remained true after accounting for whether beneficiaries had a cancer or non-cancer diagnosis."

For visits in the last seven days of life, "for-profits and non-profits both averaged about 6 provider visits" in 2017, the GAO notes. But for the last three days, for-profits fell behind their non-profit peers for skilled visits - 77 percent versus 85 percent. Non-skilled visits were the opposite, however - 68 percent versus 57 percent.

Conclusion: "While [the **Centers for Medicare & Medicaid Services**] instructs surveyors to review previous survey findings and complaints, CMS does not instruct surveyors to use information on providers' performance on quality measures or other potential indicators of quality as part of the survey process," the GAO says. "This information could be used to enhance the survey process."

The GAO also laments that CMS has only termination as an enforcement option - a criticism shared by earlier OIG reports. And CMS uses termination only "rarely," the GAO adds.

Recommendation: CMS should incorporate QMs and other quality indicators into its survey process, the GAO urges. Congress also should grant CMS the authority to use alternative sanctions, such as those used for home health agencies and nursing homes.

"Meaningful quality measures can also serve as key indicators of provider quality," the **Department of Health and Human Services** agrees in its comments on the report. "We will look into ways to incorporate the use of this meaningful quality measure data into the hospice survey process," HHS says, referring to Hospice Compare data.

GAO May Want Minimum Visit Target

Yet more focus on hospice surveys means they are likely to get even tougher, predicts attorney **Meg S.L. Pekarske** with **Reinhart Boerner Van Deuren** in Madison, Wisconsin. "We have seen a rise in survey intensity since before the OIG report and expect it will continue," Pekarske tells **Eli**.

Keep in mind: "CMS had the OIG reports for internal review prior to release," points out **Theresa Forster** with the **National Association for Home Care & Hospice**.

Like home health before it, the hospice industry has been on an enforcement ramp-up as government agencies churn out reports focusing on suspected fraud and abuse in the sector, Markette contends. And hospices can expect to see the enforcement efforts continue to intensify (see related story, front page).

This GAO report has some problems, however, experts counter. For one, QMs are not Conditions of Participation, Hogue says, and surveyors aren't trained on them. "Patients may pass away suddenly and unexpectedly so that the lack of visits during the 3 days prior to death may not be indicative of a lack of quality care," Hogue offers. Or "suppose the family doesn't want or need visits within the 3 days prior to death?" Patients and their loved ones may not want visits from any hospice staff members during the final days, "especially if symptoms and pain are well-controlled," she adds.

Effectively mandating a "minimum visit frequency" for unnecessary or unwanted visits is short-sighted and could be costly, Hogue indicates.

Live discharges also don't necessarily mean poor quality care, Markette says. Sometimes, if palliative care improves a patient's health so that she now exceeds the six-month prognosis, a live discharge could actually indicate good quality care, he points out.

CMS notes that "meaningful" quality data is useful. But the "potential indicators" the GAO uses could mean any number of things, experts charge.

Plus: "Attempts to use quality data by surveyors will almost inevitably result in subjective conclusions that may be very unfair to providers," Hogue warns.

And another thing: Even focusing on survey data to indicate quality has its pitfalls, Markette argues. Surveys are inherently subjective, which is evidenced by the citation statistics that vary greatly from state to state.

Add to that, hospices don't have an avenue to appeal or even really address citations they don't agree with unless they are put on the termination track, Markette says. Survey findings are often seen as the result of a fact-finding process, but they are much more subjective and really should be considered more like allegations, he contends.

Given surveys' gray areas, "it's unfair to base policies on survey findings," Markette believes.

Will Your Own Data Land You In Hot Water?

Here's what you can expect to see as the hospice crackdown proceeds - and picks up speed.

Tougher surveys. Surveys have already gotten more aggressive after focused scrutiny, but that's only likely to continue, Markette expects.

IJ citations. More intense surveys could translate to an increase in Immediate Jeopardy citations, Markette adds.

Alternative sanctions. The GAO wants more than just termination in surveyors' tool box, and that can include crushing fines.

Increased audits. Expect more audits and reviews from a variety of entities ranging from the OIG to Zone Program Integrity Contractors to Recovery Audit Contractors and more, Markette points out.

Hot topic scrutiny. Audits, reports, and more are likely to focus on hot button issues including non-cancer patients, long lengths of stay, site of service (nursing and assisted living facilities), and for-profit status.

Note: The 41-page report is at www.gao.gov/assets/710/702648.pdf.