

Eli's Hospice Insider

Regulations: New NOE Model Language On The Horizon

NOEs, certs under fire in OIG report.

Hospices are having a hard time trying to shake the industry's increasing reputation for fraud and abuse, and a new federal report isn't helping matters.

Problem: In a review of 2012 General Inpatient stay claims, the **HHS Office of Inspector General** found about one-third "lacked required information or had other vulnerabilities," the watchdog agency says in its new report, "Hospices Should Improve Their Election Statements and Certifications of Terminal Illness." The OIG used the GIP information because it had already been collected for a separate report on that topic.

The biggest problem the OIG found was that the NOE didn't specify the beneficiary was electing the Medicare hospice benefit (19 percent). Other problems included missing or inaccurate information on waiver of curative care (12 percent), missing palliative care info (9 percent) and inaccurate or unclear revocation and discharge info (4 percent).

Solution: The OIG urges the **Centers for Medicare & Medicaid Services** to "develop model text that hospices could use in crafting their election statements." In its comments on the report, CMS agrees to do so.

Experts think model language is a good idea. Consulting firm **The Health Group** in Morgantown, W.Va. "has always supported consistency and clarity from CMS as it relates to the provision of covered Medicare services," it notes in analysis of the report. "Too often, a lack of clarity and consistency from CMS has created problems for providers, including hospices."

"I have always wondered why they did not do this years ago," notes consultant **Heather Wilson** with **Weatherbee Resources** in Hyannis, Mass. "It would alleviate confusion and make sure everyone is providing the same, accurate information," Wilson says in a Weatherbee blog post.

But The Health Group does urge CMS not to let HHH Medicare Administrative Contractors each craft their own model language, as the OIG mentions. "Many hospice providers deal with multiple MACs and consistency would be enhanced if such a model election statement were provided by CMS," the consulting firm concludes. The hospice industry should also be allowed input on a form, it adds.

OIG Eyes Physician Involvement

Problem: The OIG also found problems with physician certifications of terminal illness. "In 14 percent of GIP stays reviewed, the physician did not meet requirements — such as composing a narrative — when certifying, and appeared to have limited involvement in determining that the beneficiary was appropriate for hospice care.

Solution: CMS should educate hospices on cert requirements and instruct surveyors to strengthen their review of them. (The OIG made the same education and survey recommendation for NOEs as well.) CMS agrees with the recommendation, saying it will emphasize the topics to surveyors and revamp its surveyor training accordingly.

Surveyors haven't focused on certs and NOEs before because "the specific, detailed requirements regarding election statements and certifications of terminal illness are found in Subpart B of the hospice regulations — not within the scope of hospice surveys which historically have only dealt with the Conditions of Participation, found in Subparts C and D," Wilson explains. "Valid and sufficient elections and certifications have been under the purview of Medicare contractors and related to payment scrutiny, not survey and certification for health and safety."

Watch for: CMS may develop L-tags to cite NOE and cert deficiencies, Wilson suggests.

Wilson applauds CMS for agreeing to increase its NOE and cert training for hospices. "Education is good," she says. "The more the better."

The OIG also urges CMS to "provide guidance to hospices regarding the effects on beneficiaries when they revoke their election and when they are discharged

from hospice care." Specifically, "this guidance should explicitly address (1) whether remaining days of the election period are lost and (2) when, after revocation or discharge, a new election period can begin for beneficiaries who are eligible," the OIG says.

"The thing is, this really does not matter anymore because beneficiaries have an unlimited number of 60-day benefit periods into which they can be admitted," Wilson notes. "It did matter 20 years ago when there were only four benefit periods and if a patient was discharged in the fourth benefit period, he or she lost the possibility of ever being readmitted to hospice again."

Nevertheless, CMS says it will "monitor patient revocations and discharges and provide additional guidance to hospices, if needed," according to the report.

Note: The report is at <https://oig.hhs.gov/oei/reports/oei-02-10-00492.pdf>.