

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**CMS'S RELIANCE ON OHIO
LICENSURE REQUIREMENTS DID
NOT ALWAYS ENSURE THE
QUALITY OF CARE PROVIDED
TO MEDICAID HOSPICE
BENEFICIARIES**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Gloria L. Jarmon
Deputy Inspector General
for Audit Services

September 2014
A-05-12-00086

Office of Inspector General

<https://oig.hhs.gov>

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EXECUTIVE SUMMARY

CMS's reliance on Ohio licensure requirements did not always ensure the quality of care provided to Medicaid hospice beneficiaries.

WHY WE DID THIS REVIEW

Hospice care is a program of palliative care that provides for the physical, emotional, and spiritual care needs of a terminally ill patient and his or her family. Hospices must comply with Federal and State requirements to ensure that hospice care is furnished by qualified workers. Prior Office of Inspector General (OIG) reviews of personal care services (PCS) found that services were provided by PCS attendants who did not meet State qualification requirements. OIG is performing reviews in various States to determine whether similar vulnerabilities exist at hospices.

The objective of this review was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on Ohio licensure requirements for hospice workers ensured quality of care and that adequate protection was provided to Medicaid hospice beneficiaries.

BACKGROUND

A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. Hospice care can be provided to individuals in a home, hospital, nursing home, or hospice facility.

In Ohio, the Department of Job and Family Services (State agency) administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes what services the Medicaid program will cover, including hospice care when it is provided by a licensed hospice.

A Medicaid participating hospice must meet the Medicare conditions of participation for hospices, one of which requires a hospice to be licensed if State or local law provides for licensing of hospices. Hospice providers that fail to meet conditions of participation may be required to enter into a plan of correction or be subject to termination from the Medicare and Medicaid programs. However, a hospice provider may not be subject to disallowance of past claims if found to be noncompliant or deficient with standards in the conditions of participation. CMS relies on the States to license hospices within their jurisdictions. In Ohio, hospice licenses are approved and issued by the Ohio Department of Health. To be licensed, hospices must comply with certain hospice worker requirements.

Qualified individuals must provide hospice care services in accordance with Federal and State regulations. Hospice care services include, but are not limited to, nursing care, home health aide services, physical therapy, social worker services, and spiritual care. When hospice care is furnished to an individual residing in a nursing facility, hospice care payments include payments for room and board in addition to hospice care services.

When a beneficiary is eligible for both Medicare and Medicaid (dually eligible) and elects the hospice benefit, Medicare pays for the hospice care services, and Medicaid pays for the room and board portion only. Hospice workers provide direct care to dually eligible beneficiaries and affect the quality of care provided to these beneficiaries.

HOW WE CONDUCTED THIS REVIEW

We limited our review to Medicaid hospice claims of \$100 or more paid to Ohio hospices during the 2-year period July 1, 2009, through June 30, 2011. For this report, we will refer to Medicaid costs for room and board or hospice care services, or both, paid for one beneficiary during a month as a claim. From a total of 103,668 hospice claims, we reviewed a random sample of 100 claims. We reviewed 94 claims for room and board, 3 claims for hospice care services, and 3 claims for both room and board and hospice care services. For those 100 claims, we reviewed the qualifications of 716 corresponding hospice workers from 48 hospices who provided direct care to the Medicaid beneficiaries during the month.

WHAT WE FOUND

CMS's reliance on Ohio licensure requirements did not always ensure quality of care and that adequate protection was provided to Medicaid hospice beneficiaries. We determined that hospices did not always meet State hospice licensure requirements related to hospice workers. Of the 100 claims that we sampled, 15 involved direct care provided by unqualified hospice workers. On the basis of these sample results, we estimated that 15,550 of the 103,668 claims covered by our review were associated with unqualified hospice workers.

For the 15 claims that involved direct care provided by unqualified hospice workers (3 of which had more than 1 type of deficiency), the following licensure requirements were not met:

- background check requirement not met (11 claims),
- tuberculosis test requirement not met (4 claims),
- training requirements not met (2 claims),
- performance evaluation requirement not met (1 claim), and
- written job description requirement not met (1 claim).

For Medicaid, only hospice care services payments associated with unqualified hospice workers are affected, not room and board payments. Because all 15 claims were room and board payments, we did not estimate the effect on Medicaid payments during the audit period.

WHAT WE RECOMMEND

To improve protection provided to Medicaid hospice beneficiaries, we recommend that CMS:

- work with the State agency and the Ohio Department of Health to ensure that hospices meet the State licensure requirements for hospice workers and
- consider working with the State agency to modify the State agency's hospice payment conditions by implementing provisions similar to the State licensure requirements for hospice workers.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our recommendations.

CMS COMMENTS

In written comments on our draft report, CMS generally agreed with our first recommendation. Specifically, CMS stated that it will “discuss the report findings with the State Survey agency and the Ohio surveyors to ensure that the requirement for a criminal background check is completed by the agency and that all hospice workers receive initial and ongoing training to perform their duties.” CMS concurred with our second recommendation.

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INTRODUCTION

WHY WE DID THIS REVIEW

Hospice care is a program of palliative care that provides for the physical, emotional, and spiritual care needs of a terminally ill patient and his or her family. Hospices must comply with Federal and State requirements to ensure that hospice care is furnished by qualified workers. Prior Office of Inspector General (OIG) reviews of personal care services (PCS) found that services were provided by PCS attendants who did not meet State qualifications requirements.¹ OIG is performing reviews in various States to determine whether similar vulnerabilities exist at hospices.

OBJECTIVE

Our objective was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on Ohio licensure requirements for hospice workers ensured quality of care and that adequate protection was provided to Medicaid hospice beneficiaries.

BACKGROUND

The Medicaid Program: How It Is Administered

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, CMS administers the Medicaid program. In Ohio, the Department of Job and Family Services (State agency) administers its Medicaid program in accordance with a CMS-approved State plan. The State plan establishes which services the Medicaid program will cover, including hospice care when it is provided by a licensed hospice.

A Medicaid participating hospice must meet the Medicare conditions of participation for hospices and have a valid provider agreement to provide hospice care (*State Medicaid Manual* § 4305). One of the conditions of participation requires a hospice to be licensed if State or local law provides for licensing of hospices (42 CFR § 418.116). Hospice providers that fail to meet conditions of participation in 42 CFR part 418 may be required to enter into a plan of correction or be subject to termination from the Medicare and Medicaid programs. However, a hospice provider may not be subject to disallowance of past claims if found to be noncompliant or deficient with standards in the conditions of participation. CMS relies on the States to license hospices within their jurisdictions. In Ohio, hospice licenses are approved and issued by the Ohio Department of Health. To be licensed, hospices must comply with certain hospice worker licensure requirements.

When hospice care is furnished to an individual residing in a nursing facility, hospice care payments include payments for room and board in addition to hospice care services. If a beneficiary is eligible for both Medicare and Medicaid (dually eligible) and elects the hospice

¹ U.S. Department of Health and Human Services, OIG, portfolio entitled *Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement*, issued November 15, 2012.

benefit, Medicare pays for the hospice care services, and Medicaid pays for the room and board portion only. Hospice workers provide direct care to dually eligible beneficiaries and affect the quality of care provided to these beneficiaries.

Hospices Provide Care to Terminally Ill Patients

A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. An individual is considered to be terminally ill if the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. Hospice care can be provided to individuals in a home, hospital, nursing home, or hospice facility.

Qualified individuals must provide hospice care services in accordance with Federal and State regulations. Hospice care services include, but are not limited to, nursing care, home health aide services, physical therapy, social worker services, and spiritual care.

HOW WE CONDUCTED THIS REVIEW

We limited our review to Medicaid hospice claims² of \$100 or more paid to Ohio hospices during the 2-year period July 1, 2009, through June 30, 2011. From a total of 103,668 claims, we reviewed a random sample of 100 claims. A claim represented the Medicaid costs for room and board or hospice care services, or both, paid for one beneficiary during a month.³ For these 100 claims, we reviewed the qualifications of 716 corresponding hospice workers from 48 hospices who provided direct care to the Medicaid beneficiaries during the month.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, Appendix B contains our sample design and methodology, and Appendix C contains our sample results and estimates. Appendix D contains excerpts from the applicable State regulations.

² For this report, we will refer to Medicaid costs for room and board or hospice care services, or both, paid for one beneficiary during a month as a claim.

³ We reviewed 97 claims for room and board and 6 claims for hospice care services. The total exceeds 100 because 3 claims were for both room and board and hospice care services.

FINDINGS

CMS’s reliance on Ohio licensure requirements did not always ensure quality of care and that adequate protection was provided to Medicaid hospice beneficiaries. We determined that hospices did not always meet State hospice licensure requirements related to hospice workers. Of the 100 claims that we sampled, 15 involved direct care provided by unqualified hospice workers. On the basis of these sample results, we estimated that 15,550 of the 103,668 claims covered by our review were associated with unqualified hospice workers.

LICENSURE REQUIREMENTS FOR HOSPICE WORKERS WERE NOT ALWAYS MET

Of the 100 claims that we sampled, 15 involved direct care provided by workers at hospices that did not meet 1 or more of the State’s licensure requirements for hospices. For this report, we refer to these hospice workers as unqualified. The table below summarizes, by licensure requirement, the number of sampled claims associated with the deficiencies that we identified.

Table 1: Summary of Sampled Claims Associated With Unqualified Workers

Type of Deficiency	Number of Claims Affected
Background check requirement not met	11
Tuberculosis test requirement not met	4
Training requirement not met	2
Performance evaluation requirement not met	1
Written job description requirement not met	1

On the basis of these sample results, we estimated that 15,550 of the 103,668 claims covered by our review were associated with unqualified hospice workers.

The 15 sampled claims that involved direct care provided by unqualified hospice workers were for room and board only, with Medicare covering the corresponding hospice care service claims. For Medicaid, only hospice care services payments associated with unqualified hospice workers are affected, not room and board payments. Because all 15 claims were room and board payments, we did not estimate the effect on Medicaid payments during the audit period.

Hospices Did Not Meet the Background Check Requirement for Workers

For 17 hospice workers associated with 11 sampled claims, hospices did not ensure that a background check was completed in compliance with the State licensure requirements. For 11 hospice workers associated with 8 sampled claims, a background check was not completed before the claim-month. For six hospice workers associated with the remaining three sampled claims, a fingerprint impression was not completed. State regulations⁴ specify that a background

⁴ Chapter 3701-19-09(G) of the Ohio Administrative Code.

check and a fingerprint impression shall be completed for all workers in a position that involves providing direct care to an older adult.⁵

Hospices Did Not Meet the Tuberculosis Test Requirement for Workers

For four hospice workers associated with four sampled claims, hospices did not ensure that a tuberculosis test was completed in compliance with the State licensure requirements.⁶ Specifically, hospices either did not maintain documentation or did not perform a timely tuberculosis test for workers.

A Hospice Did Not Meet the Training Requirement for Workers

For four hospice workers associated with two sampled claims, we could not determine whether the workers attended training because the hospice did not maintain any training documents in these employees' files. State regulations specify that all hospice workers shall attend ongoing training programs to assure maintenance of appropriate skill levels.⁷

A Hospice Did Not Meet the Performance Evaluation Requirement for One Worker

For one hospice worker associated with one sampled claim, the hospice did not document the performance evaluation. State regulations specify that hospice providers must evaluate the performance of each staff member regularly.⁸

A Hospice Did Not Meet the Written Job Description Requirement for One Worker

For one hospice worker associated with one sampled claim, a job description listing the hospice worker's duties was not available. State regulations specify that each worker shall have an accurate written job description.⁹

CMS'S RELIANCE ON OHIO LICENSURE REQUIREMENTS FOR HOSPICE WORKERS DID NOT ALWAYS ENSURE THE QUALITY OF CARE PROVIDED TO MEDICAID BENEFICIARIES

CMS relied on State licensure requirements for hospices. However, we found that in some cases hospices did not meet certain State licensure requirements for employee background checks, tuberculosis tests, training, performance evaluations, and job descriptions. CMS's reliance on the licensure requirements did not always ensure quality of care and that adequate protection was

⁵ State regulations define "older adult" as a person aged 60 or older.

⁶ Chapter 3701-19-09(B)(4)(c) of the Ohio Administrative Code.

⁷ Chapter 3701-19-09(E) of the Ohio Administrative Code.

⁸ Chapter 3701-19-09(F) of the Ohio Administrative Code.

⁹ Chapter 3701-19-09(B) of the Ohio Administrative Code.

provided to Medicaid beneficiaries. Hospices are licensed in accordance with State regulations, and hospices are expected to comply with those regulations.

The effect of the deficiencies that we identified was that hospices could not be sure that hospice workers were free of health conditions that might have created a hazard for the Medicaid beneficiaries. Further, hospices could not always demonstrate that the workers met certain State requirements, such as background check or training requirements.

RECOMMENDATIONS

To improve protection provided to Medicaid hospice beneficiaries, we recommend that CMS:

- work with the State agency and the Ohio Department of Health to ensure that hospices meet the State licensure requirements for hospice workers and
- consider working with the State agency to modify the State agency's hospice payment conditions by implementing provisions similar to the State licensure requirements for hospice workers.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our recommendations. The State agency's comments are included in their entirety as Appendix E.

CMS COMMENTS

In written comments on our draft report, CMS generally agreed with our first recommendation. Specifically, CMS stated that it will “discuss the report findings with the State Survey agency and the Ohio surveyors to ensure that the requirement for a criminal background check is completed by the agency and that all hospice workers receive initial and ongoing training to perform their duties.” CMS concurred with our second recommendation. CMS's comments are included in their entirety as Appendix F.

OTHER MATTERS

State regulations define a hospice aide to be “a home health aide who has successfully completed training and a competency evaluation program ... [and] ... is currently listed in good standing on the State Nurse Aide Registry,¹⁰ and is employed by a hospice care program.”¹¹ State regulations also specify that any staff member, including a volunteer, who functions in a professional capacity shall meet the standards applicable to that profession, including but not

¹⁰ The Nurse Aide Registry keeps track of those individuals who have met written and skills test criteria to be certified for employment in long-term care settings, usually nursing homes. The registry also maintains records of those nurse aides who have had a finding of abuse, neglect, or misappropriation of property against them.

¹¹ Chapter 3701-19-01(H) of the Ohio Administrative Code.

limited to possessing current Ohio licensure, registration, or certification.¹² However, Ohio does not require a home health aide to be a registered State-tested nurse aide.

Of the 716 hospice workers reviewed for our sampled hospice claims, 169 were home health/hospice aides. Our review noted that 16 of the 169 aides related to 7 claims were not in good standing on the State Nurse Aide Registry. Because Ohio does not require a home health aide to be a registered State-tested nurse aide, we did not take exception to claims associated with aides identified as not in good standing. However, Medicaid hospice beneficiaries would benefit from receiving care only from aides in good standing on the State Nurse Aide Registry.

¹² Chapter 3701-19-09(A) of the Ohio Administrative Code.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

For the audit period July 1, 2009, through June 30, 2011, we limited our review to Medicaid payments that the State agency made to hospice providers for hospice care provided to Medicaid beneficiaries as authorized under the State plan. We excluded claims in which the paid amount was less than \$100.¹³

We determined that the State processed and paid 103,668 Medicaid claims totaling \$387,987,282 (\$281,895,275 Federal share) for hospice care services during the audit period. We reviewed a random sample of 100 claims.

We did not review the overall internal control structure of the State agency or the Medicaid program. Rather, we limited our internal control review to the objective of our audit.

We conducted fieldwork from January through March 2013 at 48 hospices throughout Ohio.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- held discussions with State agency officials to gain an understanding of the State agency's hospice program;
- obtained Medicaid paid claims for hospice services provided during the audit period from the State agency;
- identified a sampling frame of 103,668 claims, totaling \$387,987,282 (\$281,895,275 Federal share);
- selected a random sample of 100 claims from our sampling frame and, for each claim, obtained and reviewed the related hospice documentation to determine whether hospice workers who provided direct care to the beneficiaries in our sample of claims were qualified in accordance with State requirements; and
- estimated the number of claims that were associated with at least 1 unqualified hospice worker in the sampling frame of 103,668 claims.

¹³ For this report, we will refer to Medicaid costs for room and board or hospice care services, or both, paid for one beneficiary during a month as a claim.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: STATISTICAL SAMPLING METHODOLOGY

POPULATION

The population consisted of Medicaid payments of \$100 or more for one beneficiary during a month that the State made to hospices for care provided from July 1, 2009, through June 30, 2011, for which the State claimed Federal Medicaid reimbursement.

SAMPLING FRAME

The sampling frame was a data file provided by the State agency containing 103,668 Medicaid payments of \$100 or more for 1 beneficiary during a month paid to hospices during the audit period for hospice services totaling \$387,987,282 (\$281,895,275 Federal share).

SAMPLE UNIT

The sample unit was a claim (which in this report we are using to describe Medicaid costs for room and board or hospice care services, or both, paid for one beneficiary during a month).

SAMPLE DESIGN

We used a simple random sample.

SAMPLE SIZE

We selected a sample of 100 claims.

SOURCE OF RANDOM NUMBERS

We used the OIG, Office of Audit Services, statistical software to generate the random numbers.

METHOD OF SELECTING SAMPLE UNITS

We consecutively numbered the sample units in the frame. After generating the random numbers, we selected the corresponding frame items.

ESTIMATION METHODOLOGY

We estimated the number of claims affected by unqualified hospice workers using the point estimate.

APPENDIX C: SAMPLE RESULTS AND ESTIMATES

SAMPLE RESULTS

Table 2: Hospice Claims Associated With Unqualified Hospice Workers

Frame Size	Sample Size	Number of Claims Associated With Unqualified Workers
103,668	100	15

SAMPLE ESTIMATES

**Estimated Number of Hospice Claims
Associated With Unqualified Workers
(Limits Calculated for a 90-Percent Confidence Interval)**

Point estimate	15,550
Lower limit	9,830
Upper limit	22,962

APPENDIX D: STATE REGULATIONS FOR HOSPICE WORKERS

Pursuant to Ohio Administrative Code 3701-19-09, General Requirements for Hospice Program Personnel:

- (A) Each hospice care program shall utilize personnel that have appropriate training and qualifications for the services that they provide. Any staff member, including a volunteer, who functions in a professional capacity, shall meet the standards applicable to that profession, including but not limited to possessing current Ohio licensure, registration, or certification, if required by law, and practicing within the applicable scope of practice.
- (B) The hospice care program shall provide each staff member, including volunteer and contracted staff members, with a written job description delineating his or her responsibilities. The program shall assure that all staff members, including volunteers, provide services to hospice patients and their families in compliance with all of the following standards:
 - (1) Services are provided in accordance with the patients' plans of care;
 - (2) Services are provided in accordance with the policies and procedures developed by the interdisciplinary team;
 - (3) Services are provided in accordance with current and accepted standards of practice;
 - (4) Services are provided by staff members who comply with the program's employee health policies; and
 - (a) The hospice care program shall have a written plan to ensure the health and safety of hospice patients that includes policies and procedures regarding screening of staff for communicable diseases.
 - (b) The hospice care program shall have written policies and procedures regarding measures taken to prevent staff with direct hospice patient contact who have been diagnosed with a communicable disease from transmitting this disease to patients, care givers or other staff. The policies shall indicate when infected or ill staff must not render direct patient care.
 - (c) The hospice care program shall document, as applicable, compliance with U.S. Department of Labor's occupational safety and health administration (OSHA), U.S. Centers for Disease Control and Prevention (CDC) and applicable Ohio Department of Health standards concerning health requirements for staff provision of services in health care settings, including requirements for maintaining tuberculosis control.
 - (5) All services are documented in the patient's central clinical record.

- (C) Each hospice care program shall ensure that all personnel treat each patient and his or her property with respect, not abuse or neglect patients, and not misappropriate a patient's property.
- (D) Each hospice care program shall employ personnel without discrimination on the basis of sex, age, race, creed, national origin, or handicap.
- (E) Each hospice care program shall provide an ongoing training program for its personnel, including volunteers.
- (F) Each hospice care program shall evaluate the performance of each staff member regularly.
- (G) Except as provided in Chapter 3701-13 of the Administrative Code, no hospice care program shall employ a person who applies on or after January 27, 1997, for a position that involves the provision of direct care to an older adult, if the person:
 - (1) Has been convicted of or pleaded guilty to an offense listed in division (C)(1) of section 3712.09 of the Revised Code; or
 - (2) Fails to complete the form(s) or provide fingerprint impressions as required by division (B)(3) of section 3712.09 of the Revised Code.

Pursuant to Ohio Administrative Code 3701-13-01, Hiring of Direct-Care Provider Employees, Definitions, (K), "older adult" means a person aged 60 or older.

Pursuant to Ohio Administrative Code 3701-19-01, Hospice Care Programs, Definitions,

(G) "Home health aide" means an individual who, in accordance with rule 3701-19-16 of the Administrative Code, provides home care services for hospice patients and their families.

(H) "Hospice aide" means a home health aide who has successfully completed a training and competency evaluation program approved by the director under division (A) of section 3721.31 of the Revised Code and Chapter 3701-18 of the Administrative Code, is currently listed in good standing on the state nurse aide registry, and is employed by a hospice care program.

APPENDIX E: STATE AGENCY COMMENTS



John R. Kasich, Governor
John B. McCarthy, Director

April 28, 2014

Ms. Sheri L. Fulcher
Office of Audit Services, Region VI
233 North Michigan, Suite 1360
Chicago, IL 60601

Re: Report Number A-05-12-00086

Dear Ms. Fulcher,

Please accept this letter as Ohio's response to the draft OIG Audit report listed above. Ohio concurs with the recommendations identified in the report. Ohio's response is included below.

Ohio agrees with the recommendations included in the audit report titled "CMS's Reliance on Ohio Licensure Requirements Did Not Always Ensure the Quality of Care Provided to Medicaid Hospice Beneficiaries" (Report Number A-05-12-00086). Ohio accepts the recommendations included in this report. Ohio's reply is included below.

Recommendation: To improve protection provided to Medicaid hospice beneficiaries, we recommend that CMS:

- work with the State agency and the Ohio Department of Health to ensure that hospices meet the State licensure requirements for hospice workers and
- consider working with the State agency to modify the state agency's hospice payment conditions by implementing provisions similar to the State licensure requirements for hospice workers.

Nature of corrective action: Ohio will work with CMS and the Ohio Department of Health to amend Ohio's state plan if required to implement recommendations included in Report Number A-05-12-00086.

Thank you for your report. We appreciate the recommendations and look forward to collaborating with you on future endeavors.

Sincerely,

A handwritten signature in black ink that reads "John B. McCarthy".

John B. McCarthy
State Medicaid Director

50 W. Town Street, Suite 400
Columbus, Ohio 43215

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APPENDIX F: CMS COMMENTS



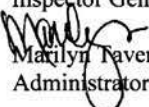
DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: JUL 17 2014

TO: Daniel R. Levinson
Inspector General

FROM: 
Marilyn Ravener
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "CMS's Reliance on Ohio Licensure Requirements Did Not Always Ensure the Quality of Care Provided to Medicaid Hospice Beneficiaries," (A-05-12-00086)

The Centers for Medicare & Medicaid Services (CMS) would like to thank OIG for the opportunity to review and comment on the above-referenced OIG draft report. OIG's objective was to determine if CMS's reliance on Ohio licensure requirements for hospice workers ensured quality of care and that adequate protection was provided to Medicaid hospice beneficiaries.

The OIG found that CMS's reliance on Ohio licensure requirements did not always ensure quality of care and that adequate protection was provided to Medicaid hospice beneficiaries. Also, OIG determined that hospices did not always meet state hospice licensure requirements related to hospice workers. Of the 100 claims that OIG sampled, 15 involved direct care provided by unqualified hospice workers. On the basis of these sample results, OIG estimated that 15,550 of the 103,668 claims covered by their review were associated with unqualified hospice workers.

For the 15 claims that involved direct care provided by unqualified hospice workers, (three of which had more than one type of deficiency), the following licensure requirements were not met: (1) Background check requirement (11 claims); (2) Tuberculosis test requirement (four claims); (3) Training requirements (two claims); (4) Performance evaluation requirement (one claim); and (5) Written job description requirement (one claim).

OIG Recommendation

The OIG recommends that CMS work with the State Agency and the Ohio Department of Health to ensure that hospices meet the State licensure requirements for hospice workers.

CMS Response

The CMS does not have the authority to enforce state licensure and/or registration requirements, and CMS also does not have a specific Condition of Participation that addresses state requirements for the licensure and/or registration of non-professional personnel. However, there is a specific regulation at 42 CFR 418.114(d) that the hospice obtain a criminal background

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check on all personnel providing direct care or having access to patient records in the hospice. While CMS does not have authority over state licensure/registration requirements, CMS will discuss the report findings with the State Survey Agency and the Ohio surveyors to ensure that the requirement for a criminal background check is completed by the agency and that all hospice workers receive initial and ongoing training to perform their duties.

OIG Recommendation

The OIG recommends that CMS consider working with the State agency to modify the State Agency's hospice payment conditions by implementing provisions similar to the State licensure requirements for hospice workers.

CMS Response

The CMS concurs with OIG's recommendation. While CMS does not have authority over state licensure/registration requirements, CMS will request information and discuss further with the state agency.

The CMS thanks OIG for their efforts on this issue and looks forward to working with OIG on this and other issues in the future.