Session 706: 
**Hospice Enforcement and Compliance**

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Today’s Panel
Flow

- Context
  - Evolution of Hospice Compliance
  - What We’re Seeing Today
  - Coming Down the Pike
- How to Mitigate Risk
  - Audit/Monitoring
  - Training/Education
  - Case Example
- When A Regulator Shows Up at Your Door
  - Tips – The New Era of Hospice Enforcement
  - Case Example
  - Tips – “prevention is the best cure”
Caveats

- Audit criteria vary by jurisdiction and entity and are continually evolving
- Disclaimer: None of our remarks are intended to be legal advice

Who’s in the room...
Upping the Hospice Compliance Ante

• OIG Hospice Compliance Program Guidance (1999)
• 59% increase in hospice length of stay (2000-2010) => calls for greater accountability and quality data collection
• Medicare/Medicaid Contractors incentivized by recoupments (RACs, ZPICs, MICs)
• LCDs evolve from guidelines to requirements
• Patient Protection and Affordable Care Act – return of “overpayment” within 60 days...is an obligation as defined in the False Claims Act
• Zone Program Integrity Contractors turn attention to pre-payment reviews
• Open Access
• Changing interpretations (LCDs)
• Poor documentation +

What We’re Seeing – Tip of the Iceberg

Orlando Area Hospice to Pay $3 Million to Resolve Allegations That It Billed Medicare for Patients Not Terminally Ill

Hospice of Arizona and Related Entities Pay $12 Million to Resolve False Claims Act Allegations

$112 million claim filed against San Diego Hospice...Feds cite 2012 whistleblower case but provide few additional details
What We’re Seeing – Top Denials
Palmetto GBA 4Q2013

• Hospice Appropriateness
  • Legible signature
  • Clear evidence of initial and ongoing prognoses of 6 months or less
  • Documentation supports LCDs
  • Documentation of co-morbidity

• Plan of Care
  • Individualized
  • Documentation of review no less than every 15 days

What We’re Seeing - Palmetto GBA 4Q2013

• Face to Face Encounters
  • Present and within time period
  • Signed, dated and in correct format

• Valid Election Statement
  • Within required timeframes
  • Complete beneficiary notices, data and signed/dated
Coming Down the Pike

• Quality Reporting Fraud
  • QRP – Hospice Quality Reporting Program (2013 data by April 2014 for FY2015 payment determination)
    • Structural Measure
    • NQF #0209 Pain Measure
    • Hospice Information Set (Jul 2014)

• Diagnoses Specificity (Concurrent with ICD-10 transition - Oct 2014)
  • Multiple Related Diagnoses (LCDs/Limitations to Unrelated Costs)
  • RTP of non-specific symptom diagnoses (AFTT, Debility, others)

HOW TO MITIGATE RISK
Communication

- Open
  - Evaluate potential barriers
  - Allow direct access to the Compliance Department
  - Encourage questions and reports of concerns

- Effective
  - Address multi-generational workforce needs
  - Careful consideration to determine what needs to be communicated and how it should be communicated

Monitoring/Auditing

- Monitoring
  - Upper management monitors compliance activity and develops internal controls
  - Lower and middle management monitor compliance with policies/procedures and other governing documents, and implements internal controls

- Auditing
  - Determine if internal controls are effective
  - Independent of operations
  - External reviews and consultants
  - Attorney/Client privilege
Training/Education

- Engage your workforce – “What’s in it for me?”
- Address multi-generational workforce needs
- Measure effectiveness – Kirkpatrick Model
  - Reaction
  - Learning
  - Behavior
  - Results

Case Example

- The hospice was notified of DOJ/FBI visits to former employees
- Engaged counsel and outside consultants under ACP
  - Litigation Hold
- Contacted State AG
- Letter sent outlining compliance program and prior government audit results
- Declined to intervene
  - Qui Tam unsealed
  - Relator counsel selected not to move forward
Hospice Enforcement and Compliance

When a Regulator Shows Up at Your Door

Tips – The New Era Of Hospice Enforcement

- LCDs – Enforcing the speed limit
- Retrospective audits; documentation
- Administrative/civil subpoenas
- FCA *qui tams*
- Electronic production
- CIAs; Implementation report; IRO
- Permissive exclusion
- Responsible Corporate Officer Doctrine
- Criminal prosecution
- Employment claims; retaliation, defamation
- Public relations nightmare; referrals; census
Case Example

- ADR; Medical review process
- Internal dispute; Board control
- FCA *qui tam*; Retaliation claim
  - Press conference; seal; sanctions
- DOJ; Cooperation; audit & medical review
  - Consultant costs
  - Costs of electronic discovery
- DOJ Intervention; Financial (in)ability to pay
- Management Agreement; Acquisition

Case Example Cont.

- Settlement negotiations (the time cost)
  - DOJ
  - HHS-OIG
  - Relator (FCA & personal claims; fees & costs)
- Litigating fairness, adequacy & reasonableness
  - A “travesty of justice”
- Retaliation claim; IRS lien(s); fees & costs; Realtor’s share
- CIA; Education & training; Implementation report
- What’s next???
Tips – “prevention is the best cure” (Epictetus)

- Education
  - OIG guidance
  - ADR; Medical reviews
- Prospective audits
- Voluntary disclosure (HPH)
- Emphasis on compliance
- “Minding the ship”; “Buck stops here”
  - Responsible Corporate Officer Doctrine
- Employment issues; retaliation
- “The Richest Man in Babylon” (George Clayson)

Questions...
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