

Potential Fraud in Hospice Agencies



**CENTERS FOR MEDICARE & MEDICAID
SERVICES (CMS)
REGION IX, SAN FRANCISCO
PAT FREY, NURSE CONSULTANT**

CMS and the State of California



- CMS contracts with the State of California, Department of Public Health to conduct surveys
 - The State surveys multiple providers:
 - ✦ Hospice and Home Health, Nursing Homes, Hospitals, etc.
 - The State ensures that Hospice' follow the ***Conditions of Participation*** (CMS regulations)
 - ✦ Regulations prescribe how the surveys are to be conducted and what the surveyors are to look for/ Appendix M
 - http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_m_hospice.pdf

CMS and the State of California



- Conditions of Participation for each provider type include interpretive guidelines that instruct the surveyors on how to investigate each of the regulations

Example of Regulation/Interpretive Guidelines



L504

- ***§418.52(a)(3) - The hospice must obtain the patient's or representative's signature confirming that he or she has received a copy of the notice of rights and responsibilities.***

Procedure §418.52(a)(3)

- ***Review the clinical record for evidence of the patient's or representative's signature confirming receipt of the notice of rights and responsibilities.***

The Survey Process



- Offsite Preparation
- Entrance Interview
- Information Gathering
 - Sample Selection
 - ✦ Home visits and Record Reviews
- Information Analysis
- Exit Conference
- Formation of the Statement of Deficient Practice

CMS & The State Survey Agency



- **Mission Priority Document**
 - Instructs the States on which provider categories have priority for surveys
 - States must do this work to be reimbursed
 - Total of 4 tiers, which indicate what is to be done first, Tier 1 is considered the highest priority.

CMS and the MAC/ FI



- CMS also has contractual obligations with the MAC/ Fiscal Intermediary who receives and pays out money on behalf of CMS
 - The MACs can conduct medical record reviews to determine whether a Hospice is meeting payment criteria in accordance with prescribed rules.
 - ✦ The rules can be found in the Medicare Benefit Policy Manual, Chapter 9:
 - ✦ <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c09.pdf>

Some Requirements for Hospice Service



- **Eligibility:**
 - The patient must be entitled to Part A of Medicare; and
 - Must be certified as being terminally ill
- **Election Periods**
 - An initial 90-day period;
 - A subsequent 90-day period; or
 - An unlimited number of subsequent 60-day periods

Some Requirements for Hospice Service



- Certification of Terminal Illness
 - The hospice must obtain written certification of terminal illness for each of the election periods; and
 - The written certification must be obtained **before** it submits a claim for payment
 - ✦ *Exception:* If the hospice cannot obtain the written certification within 2 calendar days, after a period begins, it must obtain an oral certification within 2 calendar days and the written certification before it submits a claim for payment
 - Certification will be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness

Some Requirements for Hospice Service



- ✦ (1) The certification must specify that the individuals' prognosis is for **a life expectancy of 6 months or less if the terminal illness runs its normal course**
- ✦ (2) Clinical information and other documentation that support the medical prognosis **must** accompany the certification and **must** be filed in the medical record with the written certification
- ✦ (3) The physician must include a brief **narrative** explanation of the clinical findings that supports a life expectancy of 6 months or less as part of the certification and recertification forms, or as an addendum to the certification and recertification forms.

CFR §418.52: Patient's Rights



L504: The hospice must obtain the patient's or representative's signature confirming that he or she has received a copy of the notice of rights and responsibilities

Questionable if this has not been done

CFR 484.52: Patient's Rights



L505: The patient has the right:

- (iii) *To voice grievances regarding treatment or care that is (or fails to be) furnished* and the lack of respect for property by anyone who is furnishing services on behalf of the hospice
- (vi) To not be subjected to discrimination or reprisal for exercising his or her rights.

CFR §418.52: Patient's Rights



- **L512:** The patient has the right to the following:
 - (1) Receive effective pain management and symptom control from the hospice for conditions related to the terminal illness

- L515: Choose his or her attending physician

- L518: Receive information about the services covered under the hospice benefit

Hospice Services



- Physician services provided by Hospice-employed physicians and nurse practitioners or other physicians arranged by the Hospice
- Nursing Care
- Medical Equipment
- Medical Supplies
- Drugs for symptom control and pain relief
- Hospice aide and homemaker services
- Physical Therapy



- Occupational Therapy
- Speech-language pathology services
- Social worker services
- Dietary counseling
- Spiritual counseling
- Grief and loss counseling for the individual and his or her family
- Short-term inpatient care for pain control and symptom management, and for respite care



- Any other Hospice services, as specified in the patient's plan of care (POC) and furnished or arranged by the Hospice, as reasonable and necessary, and for which payment may otherwise be made under Medicare.

CFR §418.52: Patient's Rights



- L519: Receive information about the scope of services that the hospice will provide and specific limitations on those services

CFR §418.102: Medical Director



- **L667: Initial certification of terminal illness**
 - The medical director or physician designee reviews the clinical information for each hospice patient and provides written certification that it is anticipated that the patient's life expectancy is **6 months or less if the illness runs its normal course**. The physician must consider the following when making this determination:
 - ✦ The primary terminal condition;
 - ✦ Related diagnosis(es) if any;
 - ✦ Current subjective and objective medical findings;
 - ✦ Current medication and treatment orders; and
 - ✦ Information about the medical management of any of the patient's conditions unrelated to the terminal illness

CFR §418.102: Medical Director



- **L668: Recertification of the terminal illness.**
 - Before the recertification period for each patient, as described, the medical director or physician designee must review the patients' clinical information.

CFR §418.104: Clinical Records



- L671: A clinical record containing past and current findings is maintained for each hospice patient. The clinical record ***must contain correct clinical information*** that is available to the patient's attending physician and hospice staff. The clinical record may be maintained electronically.
- L673: **Signed** copies of the notice of patient rights and the election statement.

CFR §418.102: Medical Director



- L676: Physician certification and recertification of terminal illness as required.

Example of Hospice Fraud



- **Hospice in Southern California.**
 - Very large hospice
 - Surveyor went out on a complaint and found that 17% of the patients were not Hospice qualified
 - We had Immediate Jeopardy twice regarding improper medication administration with loss of life
 - We were unable to terminate this hospice because there were not enough hospice agencies in the area to take all of the patients that would have needed to be transferred
 - The Government recovered nearly \$4 million dollars from this Hospice. The State Medicaid Fraud Unit also recovered money.

Remember



- Concerns regarding ‘quality of care’ should be reported to the District Offices with the State of California, Department of Public Health.
- Concerns regarding ‘fraudulent’ activity should be reported to the Region IX Offices.
 - Patricia.Frey@cms.hhs.gov
 - ✦ [415.744.3705](tel:415.744.3705)
 - Carolyn.Cahn@cms.hhs.gov
 - ✦ 415.744.3509

State of California District Offices



- The following website has all of the District Offices in California listed with addresses and telephone numbers:
 - <http://www.cdph.ca.gov/certlic/facilities/Pages/LCDistrictOffices.aspx>



Questions?

Getting in Touch



Centers for Medicare and
Medicaid Services

Division of Survey/Certification

90 7th Street, Suite 5-300 (5W)

San Francisco, CA 94103-6706

- ✓ Telephone: 415.744.3705
- ✓ Fax: 415.744.2692
- ✓ E-Mail: Patricia.Frey@cms.hhs.gov





CALIFORNIA HEALTH ADVOCATES



Hospice Payments

**DIANE CARADECUC
CMS LIAISON**

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Basics



- **Provider**
 - Medicare Certified Hospice
- **Beneficiary**
 - Elected Hospice Benefit
 - Meets basic requirements
- **Physician**
 - Certifies Beneficiary Expected to Live 6 months or less

Claims



- **Provider**
 - Codes the Level of Care Received
- **Provider**
 - Submits Claim to the MAC
- **Claim**
 - Paid Under Part A of Medicare

Coverage



- Part A Payments for
 - For the palliation and management of the terminal illness and related conditions

Non-Coverage



- Hospice care furnished by a Hospice other than the one designated by the beneficiary
- Any Medicare service related to the treatment of the terminal illness (with some exceptions)
- Room and Board, unless for short term inpatient care



- Medicare covered care in an emergency room, hospital, or other inpatient facility; outpatient services; ambulance transportation, unless
 - Arranged by the hospice or
 - Unrelated to the terminal illness

Levels of Care



- Routine home care
- Continuous home care
- Inpatient respite care
- General inpatient care

Payments



- Medicare pays a daily rate
 - For each day a patient is enrolled in the Hospice Benefit
- Daily Payments are made **regardless** of the amount of services received on a given day
- Daily payments are intended to cover all costs for services identified in the patient's plan of care

2013 Payment Rates



- Routine Home Care - **\$153.45**
- Continuous Home Care - **\$895.56**
- Inpatient Respite Care - **\$158.72**
- General Inpatient Care - **\$682.59**

Beneficiary Costs



- **Drugs**
 - If beneficiary is not an inpatient
 - ✦ Coinsurance cannot exceed \$5

- **Respite Care**
 - 5% of the amount paid by Medicare for the respite day

Limitations on Payments



- Two caps on payments made to a hospice
 - Total number of inpatient days cannot exceed 20% of total covered days
 - Aggregate payment amount limited by the established yearly amount times the number of Medicare beneficiaries

Medicare Advantage



- MA plans provide all Medicare care except Hospice care
- MA beneficiaries who elect hospice will receive the benefit under Original Medicare
- At enrollment, and then yearly, MA plan must advise beneficiary of Hospice benefit option

Reference



www.cms.hhs.gov

Medicare Learning Network

Hospice Payment System

ICN 006817 July 2012

(http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/hospice_pay_sys_fs.pdf)

Contact Information



Senior Medicare Patrol

1971 East 4th Street, Suite 200

Santa Ana, CA 92705

855-613-7080

www.cahealthadvocates.org