Session 302.
Hospice Compliance: Issues and Mitigating Risk

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Today’s Speakers
Hospice Enforcement and Compliance

WELCOME/CONTEXT

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
- If appropriate, seek legal advice specific to your situation

Who’s in the room...
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

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 – CIAs

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<th>Admitting or retaining ineligible patients</th>
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<td>Limiting physician review of eligibility</td>
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<td>Employing field staff that were not adequately trained</td>
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Kickbacks to NFs in the form of free services

#### 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’d.

• 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???

What We’re Seeing – Top Denials
Palmetto GBA 4Q2013

• Hospice Appropriateness
  • 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 – Top Denials Palmetto GBA 4Q2013 – cont’d

- 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

- Diagnoses Specificity (Oct 2014)
  - RTP of non-specific symptom diagnoses (Failure to Thrive, Debility)
  - Multiple Related Diagnoses
- Relatedness (Part D, other services)
- Post-Acute Transfer Payment Limits
  - OIG recommendation to apply to hospice
  - Accurate acute care coding
- Quality Reporting Fraud
  - Hospice QRP - Quality Reporting Program (2013 data by April 2014 for FY2015 payment determination)
  - Hospice Information Set (Jul 2014)
- Conduct Risk
Proactive Risk Mitigation

HOW TO MITIGATE RISK

Robust Compliance Programs

Can reduce risk in enforcement action, IF...

- Formalized
- Effectiveness can be demonstrated
7-Element Compliance Program

1. Implementing written policies, procedures and Standards of Conduct
2. Designating a compliance officer and compliance committee
3. Conducting effective training and education
4. Developing effective lines of communication
5. Conducting internal monitoring and auditing
6. Enforcing standards through well-publicized disciplinary guidelines
7. Responding promptly to detected offenses and undertaking corrective action
8. Assessing the program’s effectiveness

Unique Challenges and Responses

• Home-based Care Challenges
  • Mobile
  • Independent
  • Culture of patient advocacy – calling vs. job
• Effective Responses
  • Values that include compliance
• IDT
  • Training extenders
  • Communications technology (EMRs, 2-way)
  • Non-hierarchical points of contact
  • Getting out of “office” mentality to understand “field” realities
    • Bedside charting – not Starbucks
    • Empowering to not use paper
Proactive Tips: Current Areas of Focus

- Eligibility, Eligibility, Eligibility
  - Documenting to LCDs
    - Everyone: physicians, nursing, social work, spiritual care
    - All the time: At Admission, Recertification, In between
  - Track Active Length of Stay/Understand Trends
  - Teach and reinforce nuances in language that give credit
    - “No change”, “Stable” versus “Issues being actively managed”
    - “No longer eligible” versus “Care Goals Completely Met”

- Consistency
- Process knowledge and checks
- Accuracy in all things (Cost Report syndrome)

Hospice Enforcement and Compliance

When a Regulator Shows Up at Your Door
Tips – Active Investigation

Demonstrated Effectiveness and Proactive Approach Can Mitigate Impact/Risk

- The hospice aware 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 elected not to move forward
“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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