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July 30, 2019

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Ave., S.W.
Washington, DC 20201

Re: Office of Inspector General Reports on Medicare hospice deficiencies

Dear Administrator Verma:

Hospice enrollees are some of Medicare's most vulnerable beneficiaries and deserve the level of care the program has always promised – one that respects the dignity of patients at the end of life and provides the type of individualized plan of care both patients and their families rightly expect. Earlier this month, the Department of Health and Human Services Office of Inspector General (HHS OIG) released two reports that identified significant deficiencies in the quality of care delivered to Medicare hospice enrollees.^{1,2} These two HHS OIG reports, and the larger body of work HHS OIG has developed over the last decade-and-a-half, reveal a pattern of deficient care that must be resolved. Accordingly, we write to request information about how the agency is addressing the urgent concerns HHS OIG raised.

Over the last two decades, the Medicare hospice program has changed dramatically – from one that had previously focused on a limited set of primarily cancer patients to a program representing \$17 billion in Medicare spending in 2017 and caring for 1.5 million patients with a variety of chronic conditions. Such diseases include Alzheimer's disease, chronic heart failure, chronic obstructive pulmonary disease, and Parkinson's disease.³ From 2000 to 2012 the number of hospice providers increased by nearly 65 percent, with the majority of facilities operating

¹ OEI-02-17-00020

² OEI-02-17-00021

³ http://medpac.gov/docs/default-source/reports/mar19_medpac_entirereport_sec.pdf?sfvrsn=0

under for-profit status by 2017.^{4,5} While these shifts on their own are not cause for concern, patient outcomes over this time period are.

According to OIG's two recent studies, 87 percent of hospices had at least one care deficiency between 2012 and 2016. Twenty percent (903 out of 4,563 hospices surveyed) had at least one serious deficiency, meaning that the health and safety of a beneficiary were in jeopardy or the hospice was limited in its capacity to deliver adequate care.⁶ In some states, nearly every hospice that OIG surveyed had at least one deficiency during that five-year period. These reports provided chilling details of individual cases where hospices did not treat beneficiary wounds – resulting in gangrene and limb amputation.⁷ In another case, the OIG described a hospice that had allowed maggots to develop around the feeding tube of a patient.⁸

These findings are alarming and demand attention. OIG reiterated four recommendations from its prior work on hospice care, while outlining several new recommendations for the agency. We request that the Centers for Medicare & Medicaid Services (CMS) immediately address each of these and provide us with the following information:

1. CMS concurred with OIG's recommendation that CMS expand the deficiency data accrediting organizations report to CMS.
 - a. Please describe the types of metrics CMS plans to collect, the rationale for collection of those data elements, and the timeline for such collection.
 - b. Please explain how CMS plans to ensure such reporting occurs in a timely and *reliable* manner.
2. In June 2019, HHS OIG released a broader report exploring how Medicare data could be better used to identify instances of potential abuse or neglect across various settings of care.⁹ HHS OIG discovered a pattern of underreporting that may be reflective of the need to improve oversight of abuse and neglect across settings of care.
 - a. Please describe CMS's plans to rectify patterns of care deficiency, including patient neglect or abuse, as well as the underreporting to law enforcement. Specifically, per OIG's recommendation in its hospice reports, how will CMS strengthen requirements for reporting of abuse, neglect, and other harm among hospices? How does CMS plan to monitor and enforce this reporting to ensure there is effective tracking of resident harm?
 - b. CMS concurred with OIG's recommendation that CMS ensure hospices are educating their staff to recognize signs of abuse, neglect, and other harm. We request that you provide us with the educational materials provided to hospices, as well as a clear plan for oversight of information dissemination.

⁴ http://www.medpac.gov/docs/default-source/reports/mar2015_entirereport_revised.pdf

⁵ http://medpac.gov/docs/default-source/reports/mar19_medpac_entirereport_sec.pdf?sfvrsn=0

⁶ OEI-02-17-00020, Appendix C, pages 28-29

⁷ OEI-02-17-00021, page 6

⁸ *Id.*

⁹ <https://oig.hhs.gov/oas/reports/region1/11700513.pdf>

- c. CMS concurred with OIG’s recommendation that it strengthen guidance for surveyors to report suspected crimes to law enforcement. Please describe how CMS will encourage and educate patients and hospice staff to recognize and report suspected abuse specifically to law enforcement.
 - d. Please describe specifically how CMS plans to improve the channels of communication between CMS and law enforcement.
3. In response to OIG’s recommendation that CMS “improve and make user-friendly the process for beneficiaries and caregivers to make complaints,” CMS stated that it only partially concurs with the recommendation.
- a. Please explain the reasoning and specific regulatory and resource constraints that you believe would hinder the agency from fully concurring with and carrying out the OIG recommendation, including examples where appropriate.
 - b. Is CMS considering creating standardized complaint forms? If not, please explain why.
4. In its March 2019 report, the Medicare Payment Advisory Commission (MedPAC) reported that the seven hospice process quality measures are mostly “topped out,” or no longer provide meaningful distinctions in quality. In 2017, the aggregate average of these measures was 86.0 percent – a relatively high level of quality which appears disconnected from the information the OIG presented in these two reports.¹⁰ Furthermore, MedPAC has indicated outcomes measures, including a live discharge measure, merit further exploration.
- a. Please describe CMS’s plans for managing already topped-out hospice process measures.
 - b. Please describe CMS’s short- and long-term plans to improve quality measurement in hospice by incorporating outcome measures. More specifically, which outcome measures is CMS considering; which current measures would CMS consider eliminating; what are the standards for consideration; and what is the timeline for any such changes to hospice quality measures?
5. CMS concurred with the OIG recommendation that it should “increase oversight of hospices with a history of serious deficiencies.”
- a. Please describe how CMS plans to increase its oversight of hospices with a history of serious deficiencies, as well as a timeline for doing so.
 - b. Please describe how Quality Improvement Organizations (QIOs), including Quality Innovation Network (QIN) QIOs, will play a role in improving hospice care. If QIOs will not play a role, please explain why.
 - c. Is CMS considering implementing a Special Focus Facility (SFF) Program for hospice, similar to that which exists for nursing homes with a history of serious quality issues? If not, please explain why.
 - d. Please describe how CMS plans to define a “history of serious deficiencies” and the rationale for that definition. Which hospices would this additional oversight capture?

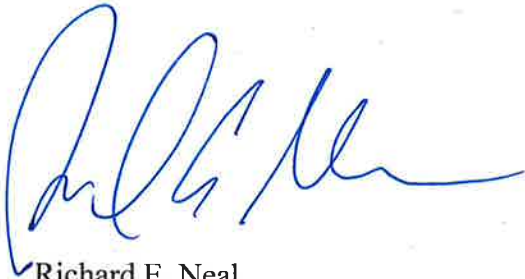
¹⁰ http://medpac.gov/docs/default-source/reports/mar19_medpac_entirereport_sec.pdf?sfvrsn=0

- e. OIG identified 313 hospices as “poor performers” based on their having had “at least one serious deficiency or one substantiated severe complaint in 2016.” Please provide the three most recent years of data on hospices with serious deficiencies (and the reasons for those deficiencies).

We must ensure that the Medicare hospice program is not only reliable but also one that effectively supports both patients and families managing this difficult stage in life. Beneficiaries must be equipped with helpful information to make informed choices about their hospice care, and we must identify and root out bad actors that may be putting seniors in harm’s way. We appreciate your commitment to providing quality care to American seniors, and we look forward to working with you to make necessary improvements to hospice care.

We appreciate your prompt attention to this matter and are eager to work with you to improve the quality of care for Medicare beneficiaries nearing the end of life. Given the urgency of these concerns, we request that you provide a written response within 14 days. If you have questions, please contact Amy Hall or Rachel Dolin of the Ways and Means Health Subcommittee majority staff at 202-225-3625 and Stephanie Parks or Carla DiBlasio at 202-225-4021 with the minority staff.

Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means



Kevin Brady
Ranking Member
Committee on Ways and Means