Hospice Insights: The Law and Beyond

Episode 36: Hospice Audit Series: CMS Program Integrity Audits Are Back!

April 21, 2021

Speaker	Statement
Meg Pekarske	Hello, and welcome to "Hospice Insights: The Law and Beyond," where we connect you to what matters in the ever-changing world of hospice and palliative care. "Hospice Audit Series: CMS Program Integrity Audits Are Back!" In this episode, Meg Pekarske and Bryan Nowicki discuss the new wave of CMS Center for Program Integrity otherwise known as CPI audits that have been the issue during the past couple weeks. These CPI audits remain focused on long length of stay patients and typically involve hundreds of claims valued at well over a million dollars. As Meg and Bryan explain, these audits may signal a new approach to auditing by CMS and it's important for hospices to refine their response and appeal strategy accordingly. Welcome Bryan, you're back!
Bryan Nowicki	Yes Meg, I'm back and raring to go. I had a nice spring break awhile back but getting back into the audits and came back just at the right time.
Meg Pekarske	Yes you did.
Bryan Nowicki	A new wave of these things has hit our hospice audit team with a flurry of activity.
Meg Pekarske	And we didn't have to do much sleuthing to say what was common because I don't know if it's 6 or 10 of these we have, but the letters either dated what was it March 30th?
Bryan Nowicki	Right. There's a wave of these went out March 30th, and another wave April 9th. But perhaps there's another wave coming. It's too early to tell right now. But yeah, the phone has kind of been ringing off the hook with

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	clients getting these letters in the mail and trying to figure out what they are and how to address them; how do they fit into the overall context of all the different kinds of audits that hospices are facing. So we've been fielding those questions and kind of putting, giving our clients that context. Because these are not the first time the CMS CPI has issued these kinds of audits.
Meg Pekarske	And so and I think that there are ones that sort of fool people on their face because people think of them as a SMRC audit so supplemental medical review because you're sending your records to Noridian. But when you see at the top of the right-hand corner it says, "CMS Program Integrity." And it comes out of Baltimore and so we call that CMS Central. So that's one thing though that I think trips people up is oh it's a SMRC audit and it's like well no it's not that. And then they also call it an ADR which people also feel like oh ADRs I remember that stair stepper. You know visual that Bryan and Meg have given about how scary something is. And ADRs and math things are not that scary. It's like well these aren't really ADRs either. They're much more in line with what a UPIC would be than really an ADR. But the other thing Bryan too we saw is they're all 10 patients, right?
Bryan Nowicki	Right. That's something new, you know, a couple of years ago CMS, CPI came out with audits and they were focused on long length of stay. But usually it's just a very modest number of patients maybe one or two because they were long length of stay the numbers could add up significantly, the dollar numbers. But it was a little sporadic between clients or hospices. You know, some would get a couple, well maybe one would get three patients and so on, but now there's a lot more uniformity to it. Everyone we've seen so far, it's ten patients. I think the minimum number of claims they're looking at is 13. So that is just over 1 year of claims. You know, each claim is a month, so it looks like the minimum threshold is 1 year on service. So we're trying to kind of piece together this new strategy that CMS is employing here with these CPI audits; by bringing that uniformity to its review. And because this is a CMS, CPI it's another reason not to be fooled into complacency about well it's just a SMRC looking at these, or it's just an ADR. As you said Meg it's not, this is coming directly from CMS. So it's not even the CMS contractors on their own, doing their own thing which we can question whether a UPIC is really making good use of government time in the kinds of audits it does. Making good use of government resources here because it's coming from CMS. We can be pretty clear that CMS is certainly behind this. They know what they want to do. They probably have a pretty specific objective out there, such that they didn't want to leave it to one of their contractors to try to

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	look into this particular area.
Meg Pekarske	That issue about 10 patients is fascinating because and we're seeing this all across the country. So it's not in one particular region. But we do have clients of varying sizes that got this, and they all get 10 patients. And that's where I think, you know, you and I were brainstorming about is there a larger project going on here. Well they're not extrapolating anything. It doesn't appear for individual providers, but are they trying to have more uniformity in sample size by provider, because if you have 1500 patients in your hospice or 100 if you're still finding 10 patients that meet this period of time; that's so you're oversampling some and probably undersampling others. I think likewise people who have gotten these there's no real correlation to because everyone says well my PEPPER says I'm not an outlier on length of stay and I think everyone who's gotten these are not an outlier on length of stay and so it's not entirely clear. The folks who are getting them, why they are getting them and that their neighbor next door are getting them and so that's been interesting too.
Bryan Nowicki	Yeah and it could signal something else going on at CMS. The fact that they're taking 10 patients per provider without really trying to make it proportional to each provider. Are they seeking to aggregate some data for some policy function.
Meg Pekarske	Yep.
Bryan Nowicki	When the contractors are out there doing their thing, it's pretty much they are trying to recover money that's not, shouldn't have been spent according to CMS. When CMS directly is involved with something like this and they're being this kind of methodical, they also have policy goals in mind. I wouldn't put it past them. I anticipate that they have policy goals in mind. Are they trying to take kind of a cross-section across a number of provider types and get the same number of long length of stay patients along provider types to try to make some broader point that might cause any kind of policy change or justify any policy movement. So I think as we continue to collect data on the kinds of patients they're looking at, their diagnosis, what is really the demographics of these groups of 10 for each hospice that are being pulled on. We're going to have a better set of data to figure out is there a policy aim in here that the hospice community should be aware of and try to comment on or at least participate in some way, beyond just responding to all of these audits which of course you have to respond to the audits and appeal them and all that.
Meg Pekarske	Yeah well and it probably goes without saying but you start doing the math and given the focus 10 patients and they're pulling essentially their entire

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	time on service. Everything that we're working on it's about a million and a half that's at stake. So you and I recorded a podcast a little bit ago where we talked about some of the I think it was like 55 million we got thrown out over the last couple months of overpayment and UPIC cases. And a lot of that was extrapolation and we got extrapolations thrown out or the error rate reduced so much that the statistics don't work anymore and those types of things. But typically in those cases the underlying amount that's due like that $44 million case, it was $26,000 was the dollar amount. Well because they only pulled a month's period of time for each of the patients in that sample. But here they're pulling such broad swaths of time that I think it's to win on these and I do think as you said appeals really important. It is, you're going to have to chip away though and it's sort of a long haul kind of enterprise.
Bryan Nowicki	Yeah, for as daunting or frightening as extrapolation is when they're taking 10 claims and turning it into multimillion dollar overpayments, our experience Meg, and you and I have been very successful at this is you stick to the appeal process and it takes months and years, but I don't think an extrapolation has survived our appeal efforts. So you kind of just, you got to be in the long game and ultimately you get rid of that extrapolation. And it's kind of an all or nothing. We took 44 million down to 29 thousand in the snap of the fingers there. But here where they're looking at 200 or 300 plus claims, each one which is going to be individually assessed and each one needs to be the subject of an appeal all the way through redetermination, reconsideration, ALJ. It's much more chipping away at it and from our experience with the last round of CPIs which are currently in that appeal process, many of them heading to the ALJ. We have had success in this chipping away process. A bit of success at redetermination. More significant success at reconsideration. I think we recently learned that we cut one of the number of denied claims in half. So you think of an error rate I think in that case was like 80 percent and it was over a million dollars. We essentially cut that in half at reconsideration. And now we go to ALJ where we hope to eliminate it or really make some inroads again. But it is the claim by claim approach, having your physicians and your witnesses lined up to really attack it that way. It's a different kind of process. A different way you allocate resources. You're not going to have to hire a statistician, but you want to make sure you have a good physician witness to help you all along the appeal process because that's really where it is going to come down to winning or losing these.

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Meg Pekarske	Well, and program integrity does mean fraud and abuse. And so that's another reason beyond just like these numbers are high. So probably working with your legal counsel is important It is still a program integrity contractor audit. So it that can always lead to a referral or make it worse. Or so I think if it's not the dollars that bring your attention forward, it also is similar to UPIC, people wouldn't handle those typically on their own. I mean these are things that folks typically should be using lawyers from the get go. And again don't be distracted by well it's just a SMRC and it's Noridian and they call it an ADR and blah blah blah. And it's like no it's actually CMS and this is just like a UPIC and it's worth a million and a half dollars and so. So yeah it's important and that's why we want to jump and do this quick podcast because it is a new development and that's why we do our podcasts is it's a very fluid way to get out information. And so I'm sure we're going to be talking more in the future about that. And like you said you I mean you and I could make up a lot of ideas about what is it this policy thing they're looking for that might be beyond just oh there are some patients on hospice that live, to have the good fortune to live longer, . But could it be something more, could it be about well when someone's on hospice for three years; we spend X dollars and comparable to like if they're on home health we'd spend X. I mean who knows what the larger 'cause you said different provider types are, you know, it could be a zillion things I could think of that would be interesting to explore. But nonetheless, I think it is significant and a stay-tuned kind of issue 'cause we might see some similarities between what we're working on in terms of diagnosis. I mean given this patient population, it's going largely be noncancer and probably your dementias and heart failures just because of the difficulty prognosticating. But maybe one last point, you talk about the chipping away and the physician and, you know, let's not forget that, you know, they're two physicians can disagree and neither be wrong or right and so this idea of, you know, getting your physicians involved, that's really important and you do have a physician who was reviewing this patient at least every two weeks of believing they were eligible. They wrote a narrative that explained why they were eligible and so you got to have a strong backbone here and believe in your team and your physicians and them exercising their judgment and being reasonable in doing so. And I think on straight up eligibility, as you previewed Bryan, we still get a lot movement and on cases that can be challenging because, you know, it isn't an exact science and all those arguments we make about that. And so I don't think that, you know, people have to be like, oh and now I'm going to owe a million and a half dollars. No it's probably going to be

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	something less than that. But it isn't going to be a snap your fingers, this is gone and now it's $26,000. It's going to be an investment over years and what not.
Bryan Nowicki	Yeah and as with really all of our appeals, having a good clinical team and ultimately a really solid physician to be able to support your appeals. And even before that having a good set of hospice physicians who are doing good narratives, documenting in the record appropriately. That's going to help you be on the lower end of whatever error rates are going to come through. It's going to help your chances of success through the appeal process. So that's definitely something that we would always focus on. But in this kind of an audit where they're picking on longer length of stay patients, I think it's important to be able to provide some context, especially when you get to the ALJ stage. And you mention the PEPPER report Meg, because as you said, a lot of our hospices they're looking at their PEPPER and saying I'm not an outlier a long length of stay. I would make that point to the ALJ and be ready to describe to the ALJ that although the ALJ's looking at long length of stay patients, it's not as if this is the entirety or even a fair depiction of the hospice's patient population. This is one end of a bell curve where through the PEPPER report we know CMS really expects hospices to have a lot of short length of stay patients and a lot of long length of stay patients, and in having that mix it doesn't mean the hospice is doing anything wrong. And so I always like to provide that kind of context. If you have a good PEPPER report, it shows you're not an outlier, then I think it's good to get that kind of context out through the appeal process so they don't have kind of a misapprehension that boy this hospice has all these patients who are on service for a year or more. Something must not be right there. Because there are patients who are on that long and that's okay. That's not automatically incorrect.
Meg Pekarske	I think that's exactly right Bryan and before we leave let's talk about some of the nuts and bolts of this, of what we're seeing here. So one thing is that in terms of timeframes, some of these are going back to 2017, but they are still going into 2020 and even after October 1st and the new election form and stuff. Obviously, none of these people are going to have that addendum there on service before that. But it's just interesting to know that it does go into 2020 pandemic timeframe. But a couple other things Bryan in those letters about if you want to extension there's a certain date by which you have to request it and why don't you talk about that a little bit.
Bryan Nowicki	Right. The timeframe they give you to respond is 45 days which is longer than what a UPIC would give you. A pretty standard response time is

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	30 days. But here they give you 45 and they even include the actual date on which that time expires. So you don't have to do your own calculation. They also in these letters say you can request an extension of time. And they give you a separate deadline to seek that extension of time. And that deadline we have found is different for different clients. We have one client whose response is due I believe May 21st. They have to request an extension of that deadline by today, April 15th when we're recording this. Another client has a deadline of May 24th and they have until May 21st to request an extension. So it's a little bit all over the place. I mean these are not necessarily the best proofread documents. Some of our clients have gotten lists of items to produce that are clearly designed for home health entities, not for hospices and we've encouraged our clients to go back to CMS, CPI and ask for the appropriate list designed for hospices or you're cross your fingers, maybe it was a mistake that you got one. We haven't come across that yet. But you have to flyspeck these because there could be idiosyncrasies with each request in terms of deadlines, the documents they're seeking, that you want to make sure you have a good document, the right document before you start investing all the time to gather together records. Otherwise, the medical records they seek, it's a pretty standard set of requests for the medical records. Stuff that we encounter all the time. Some nonmedical record documents that are standard are, they want to get licenses of the hospice physicians. They want to get employment agreements or contracts that the hospice physicians have. So those are out there as well so they're looking into the working arrangements with physicians.
Meg Pekarske	And then this is why I think working with counsel is important because, you know, how you can gather those documents and how you produce them and how you organize them. There's better ways to do that and less good ways to do that. So those are things we help people with and a lot of folks during, if you go back 2017, might have changed DMRs and so there might need to be some explanation about why records look different and sometimes when you have a legacy system; you know your ability to run different reports might be more limited and what not. So, those are things we talk through with people. So I think that it's peddle to the metal right now in terms of audit activity is just really exploded and we talked in previous episodes about UPICs have really, you know, started up again and talked about that the CPIs now are sort of off to the races and so we have some clients who have multiple. I have a Medicaid audit. I have a, you know, CPI audit. I have post-payment ADRs. Like there's a lot of money that people have that's at risk here

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	through a variety of different measures. So there's a lot of very burdened compliance officers out there having to deal with a lot of competing deadlines but a lot of handwringing by CEOs and CFOs out there about all the reserves I have to make because of these audits. When you start adding them up because anytime you do post-payment review, I mean yeah it's not impacting your cashflow like pre-payment review on day one, once you get those result, you either have to pay it, allow recoupment or if you want to hurry up and try to halt recoupment. I mean you can only do that for so long and through the first two levels of appeal and then this is going to come due and then oh by the way you just got 10, 12 percent interest on that million and a half that was at issue. And so there's some real big dollar things that again in terms of where this is getting elevated with an organization. I think random ADRs through a math probably aren't getting the level of attention nor should they when you get one off ADRs. But here this is something very different. So any other closing thoughts Bryan?
Bryan Nowicki	Well let's hope that this wave of March 30th and April 9th letters are the end of it. But who knows it could be another set of letters going out. It does seem rather expansive. It has not yet reached the level of what we experienced a couple years ago which makes me think there's more of these letters out there that clients have yet to receive and contact us about. But the last time they did this, you know, we handled quite a number of these audits. And right now within a couple of weeks we're up to, you know, 8, 9 or 10 of them and for it to reach the same level as a couple years ago, we're probably going to double that. But yeah, we have the strategies in mind to handle these kinds of unique audits. So we are full speed ahead on helping hospices get through them.
Meg Pekarske	Well Bryan that sounds very hopeful even though you said it could get doubly bad, you leave with a word of hope.
Bryan Nowicki	Yes.
Meg Pekarske	So I'll just stop right there and say no more because you're not usually the optimist. I usually play that role so--
Bryan Nowicki	I know I'm usually the bearer of bad news but I gotta keep my chin up here and we're fighting the good fight.
Meg Pekarske	Right, exactly. Well and we have 20 years of experience of winning and so, you know, this is the beginning of the end. But nonetheless, I think that they should be attention-getting within your organization. So anyway, well I appreciate you Bryan jumping on the fly and doing this because I think it was an important message to get out to folks to stay on alert about these

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	letters that might be coming in the mail.
Bryan Nowicki	Yeah, happy to do. Thank you, Meg.
Meg Pekarske	Well that's it for today's episode of "Hospice Insights: The Law and Beyond." Thank you for joining the conversation. To subscribe to our podcasts, visit our website at huschblackwell.com or sign up wherever you take your podcasts. Until next time, may the wind be at your back.