

# Hospice Medical Directors: Compliance Considerations

The hospice market continues to grow, and medical directors have always held a prominent role in compliance and operations. The Centers for Medicare and Medicaid Services (CMS) regularly revise existing hospice regulations governing coverage and payment for hospice care under the Medicare programs and continue to identify hospice medical directors as a key component. As a result, understanding guidance around this role is critical for both compliance and business operations. Further, CMS typically places more investigative resources in places where there is growth.

## Growth in the Hospice Sector

As baby boomers, the second largest age group in America, begin to reach retirement age the healthcare industry is planning the best way to serve this population across all healthcare services. Most notably, long-term care and hospice care are both poised to see the most significant impact of the baby boomers' toll on America's already overburdened healthcare infrastructure.

To keep up with this emerging and anticipated demand the number of hospice agencies has grown significantly. Per the [VMG Health 2022 Healthcare M&A Report](#), the number of hospice agencies increased 3.8% annually from 3,498 in 2010 to 5,058 in 2020. This increase was primarily attributable to growth in for-profit hospice providers. In certain states like California, government organizations have noted that the number of newly licensed providers does not correlate with community needs and can potentially create an incentive for fraudulent practices.<sup>1</sup>

## Compliance Guidance

The Department of Health and Human Services Office of Inspector General (OIG) has published numerous warnings and reports since 1995 highlighting hospice fraud and abuse. In 2021, the OIG noted hospice as a top area for criminal recoveries.<sup>2</sup> Beginning in 2023, an audit of hospice eligibility will be conducted by the OIG. The audit will focus on patients who did not have hospitalization, or an emergency department visit prior to electing hospice.<sup>1</sup> A focus on compliance processes is crucial for hospice providers to successfully navigate this increased scrutiny.

A key component of a compliant hospice program is the oversight of a qualified medical director. Per government regulations, all hospices must designate a physician to serve as the medical director of the hospice.<sup>3</sup> The duties of a hospice medical director generally include:

- Oversight of hospice clinical services at the facility.
- Developing a plan of care for each patient.
- Certification of Terminal Illness (CTI) that is recertified every 90 days.
- Acting as a resource to hospice staff, patients, family members, and attending physicians regarding pain and symptom control measures.
- Monitoring quality control measures.
- Develop clinical protocols and patient care policies.

## Fair Market Value Tips

Due to the potential ability of the medical director to refer patients to the hospice programs they might oversee, the compensation paid by the hospice program to the medical director must be set at fair market value (FMV). Obtaining a third-party fair market value opinion and understanding the appropriate interpretation of the fair market value compensation is key in structuring a compliant medical director arrangement.

## Key Considerations for a Fair Market Value Analysis of a Hospice Medical Directorship

- 1. Specialty** – Pay close attention to the medical specialty survey data selected. If the medical director is an orthopedic surgeon, but the hospice medical director's duties do not require that level of medical specialty, then this medical specialty selection may be incorrect for the determination of hospice medical director compensation.
- 2. Limitations in Specialty Survey Data** – The surveys utilized may categorize hospice medical directorship compensation under a separate specialty if the majority of a respondent's work is in another specialty. For example, a family medicine physician who spends most of their time in family practice but also provides hospice medical director services may have the compensation categorized under the family medicine medical director dataset. An understanding of the survey and how it interprets the respondent's information is key.
- 3. Percentile of Survey Data** – Another key consideration in a fair market value analysis is what percentile to select or what indication to select within the fair market value range provided. Higher percentiles of compensation may be warranted for medical directors with more administrative experience or other credentials that might benefit the quality of care provided at the hospice (certified hospice medical director, etc.).

The role of the hospice program will continue to become a more prominent component of healthcare continuity of care. Also, with the increased prominence there will be increased scrutiny of the government to ensure compliant programs.

### Sources

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