The Carolinas Center

Hospice Audits:
Tips and Strategies to Increase Success

Alice V. Harris and Jenna K. Godlewski

Nexsen Pruet, LLC

August 2, 2022

Human Connection – The Essence of Serious Illness Care Delivery
46th Annual Hospice & Palliative Care Conference – August 2022 – Charleston, SC

LEADERSHIP
VOICE
INNOVATION
IMPACT

Hospice Audits: Agenda

- Who is Auditing Hospice Claims?
- Audit Topics
- Life of an Audit: Practical Tips
- Strengthening Medical Expert Reports:
  Effective Use of Multi-Factor Templates
- Reinforcing the Appeal with Legal Arguments

LEADERSHIP
VOICE
INNOVATION
IMPACT

Who is Auditing?

- ***Who* is Auditing Hospice Claims?**
  - Office of the Inspector General for Department of Health and Human Services ("**OIG**")
  - Medicare and Medicaid Recovery Auditor Contractors ("**RACs**")
  - Supplemental Medical Review Contractor ("**SMRC**")
  - CMS Targeted Probe and Educate ("**TPE**")
  - Post-Payment Medical Review by **MAC**
  - Uniform Program Integrity Contractor ("**UPIC**")
  - Commercial and Managed Care Auditors
  - Prosecutors

LEADERSHIP
VOICE
INNOVATION
IMPACT

Telehealth and Hospice

- **Many providers have found that interacting with patients and families via telephone and video offers benefits**
  - While face-to-face is often preferred, telehealth can enhance convenience in scheduling and time, as well as transportation cost
  - Reduces risk of COVID-19 transmission to providers and patients while ensuring safe and continued care
  - Remote patient monitoring can provide for more expedited changes in response to patient needs
- **However - increased flexibilities (telehealth) also invites new scrutiny**

LEADERSHIP
VOICE
INNOVATION
IMPACT

Federal HHS OIG

- Largest inspector general in the federal government
- OIG's mission is to protect the integrity of DHHS programs
- Tasked with combatting fraud, waste and abuse in the Medicare and Medicaid programs
- OIG carries out this mission by conducting a nationwide network of audits, investigations, and evaluations, as well as outreach, compliance, and educational activities
- https://oig.hhs.gov/

LEADERSHIP
VOICE
INNOVATION
IMPACT

OIG: Recent Focus on South Carolina Medicaid Telehealth Claims

- Pre-COVID April 1, 2020 OIG Report
- Analyzed 100 South Carolina Medicaid, Fee-for-Service Telemedicine Claims
  - Sample of 100 claims from $2.3 million in payments from 7/1/14 to 6/20/17
  - ***Only 3 payments of 100 were allowable***
  - ***95 payments not payable: providers did not document the start / stop times or the consulting site location of the medical service***
    - **OIG blames State of South Carolina for not training providers or adequately monitoring compliance**

LEADERSHIP
VOICE
INNOVATION
IMPACT

OIG: Current *Telehealth* Audits

- During the COVID-19 pandemic, the Department of Health and Human Services (HHS) expanded access to telehealth for a wide range of services, including allowing hospice providers to use telehealth for hospice recertification and routine home care

- **The OIG has seven ongoing and two completed telehealth audit projects**

- Many of these audit projects focus on what types of providers and what types of patients were utilizing telehealth services during the COVID-19 pandemic and if they were appropriately billed to federal payors

LEADERSHIP
VOICE
INNOVATION
IMPACT

OIG: Current *Telehealth* Audits

December 2021	Centers for Medicare and Medicaid Services	Telehealth Services in Select Federal Health Care Programs
December 2021	Centers for Medicare and Medicaid Services	Medicaid Partial Care Program
October 2021	Indian Health Service	Audit of IHS Telehealth Technologies' Cybersecurity Controls
February 2021	Centers for Medicare and Medicaid Services	Audit of Home Health Services Provided as Telehealth During the COVID-19 Public Health Emergency
Revised	Centers for Medicare and Medicaid Services	Audits of Medicare Part B Telehealth Services During the COVID-19 Public Health Emergency
January 2021	Centers for Medicare and Medicaid Services	Home Health Agencies' Challenges and Strategies in Responding to the COVID-19 Pandemic
October 2020	Centers for Medicare and Medicaid Services	Medicare Telehealth Services During the COVID-19 Pandemic: Program Integrity Risks
Completed (Partial)	Centers for Medicare and Medicaid Services	Use of Medicare Telehealth Services During the COVID-19 Pandemic
Revised	Centers for Medicare and Medicaid Services	Medicaid—Telehealth Expansion During COVID-19 Emergency

How to Identify OIG *Hospice* Audit Topics

- **OIG Work Plan**
  - OIG announces its projects in a web-based "Work Plan" which is updated monthly and is searchable
  - https://oig.hhs.gov/reports-and-publications/workplan/index.asp
- Based on identified risks in HHS programs and operations

LEADERSHIP
VOICE
INNOVATION
IMPACT

OIG Work Plan:
Current CMS Hospice Projects

Announced or Revised	Agency	Title	Component	Report Number(s)
January 2022	Centers for Medicare and Medicaid Services	Nationwide Review of Hospice Beneficiary Eligibility	Office of Audit Services	W-00-22-35883
Revised	Centers for Medicare and Medicaid Services	Joint Work With State Agencies	Office of Audit Services	W-00-21-40002
Revised	Centers for Medicare and Medicaid Services	Medicare Hospital Payments for Claims Involving the Acute- and Post-Acute-Care Transfer Policies	Office of Audit Services	W-00-20-35832
Completed (partial)	Centers for Medicare & Medicaid Services	Review of Hospice Inpatient and Aggregate Cap Calculations	Office of Audit Services	W-00-19-35826; W-00-21-35826
Completed (partial)	Centers for Medicare & Medicaid Services	Medicare Payments Made Outside of the Hospice Benefit	Office of Audit Services	W-00-20-35797; A-09-20-03026; A-09-20-03015
Completed (partial)	Centers for Medicare & Medicaid Services	Review of Hospices' Compliance with Medicare Requirements	Office of Audit Services	A-02-16-01023; A-02-16-01024; A-02-18-01001; A-09-18-03016; A-09-18-03017; A-09-18-03028; A-09-20-03034; A-09-20-03035; A-09-18-03024; A-09-18-03009; W-00-16-35783; W-00-18-35783 various reviews

LEADERSHIP
VOICE
INNOVATION
IMPACT

Three Current OIG *Hospice* Audit Topics

- **Nationwide Review of Hospice Beneficiary Eligibility**
  - "OAS has performed several compliance audits of individual hospice providers in recent years, and each of those audit reports identified findings related to beneficiary eligibility."
  - **"We will perform a nationwide review of hospice eligibility, focusing on those hospice beneficiaries that haven't had an inpatient hospital stay or an emergency room visit in certain periods prior to their start of hospice care."**

Three Current OIG *Hospice* Audit Topics

- **Medicare Payments Made Outside of the Hospice Benefit**
  - "According to 42 CFR 418.24(d), in general, a hospice beneficiary waives all rights to Medicare payments for any services that are related to the treatment of the terminal condition for which hospice care was elected. The hospice agency assumes responsibility for medical care related to the beneficiary's terminal illness and related conditions. Medicare continues to pay for covered medical services that are not related to the terminal illness."
  - "We will produce **summary data on all Medicare payments made outside the hospice benefit**, without determining the appropriateness of such payments, for beneficiaries who are under hospice care."
  - "In addition, we will conduct **separate reviews of selected individual categories of services** (e.g., durable medical equipment, prosthetics, orthotics and supplies, physician services, outpatient) to determine whether payments made outside of the hospice benefit complied with Federal requirements."

Three Current OIG *Hospice* Audit Topics

- **Review of Hospices: Compliance with Medicare Requirements**
  - "Federal regulations address Medicare conditions of and limitations on payment for hospice services (42 CFR Part 418, Subpart G)."
  - "We will review hospice medical records and billing documentation to determine whether Medicare payments for hospice services were made in accordance with Medicare requirements."

LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicare and SC Medicaid RACs

Get ready! The RAC is back!

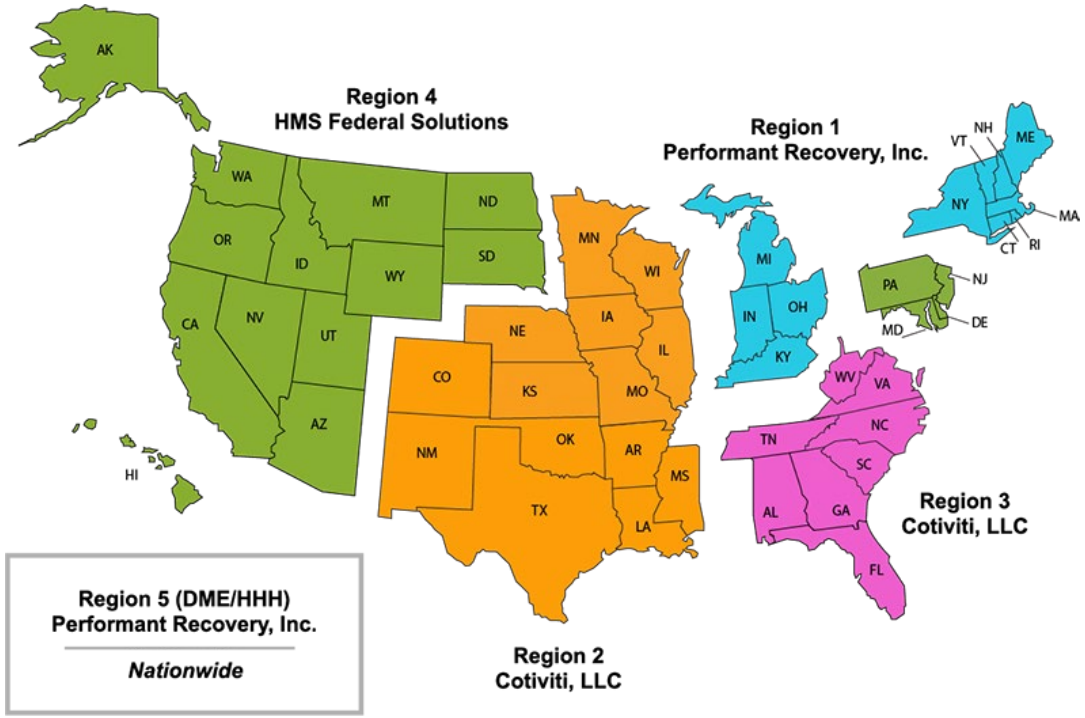
LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicare RAC

- Returned in March of 2017
- **Limited activities during pandemic but fully resumed on July 8, 2021**
- Medicare RACs review claims on a post-payment basis
- Goal: Detect past improper payments

LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicare RAC: Cotiviti



COTIVITI

Cotiviti RAC website: https://www.cotiviti.com/markets/cms-rac

LEADERSHIP
VOICE
INNOVATION
IMPACT

How to Identify Current Medicare RAC Audit Topics

- **Approved Audit Issues: https://www.cotiviti.com/cms-approved-issues-cotiviti**
- **Searchable by claim type**
- **Hospice Issues Currently Listed**
  - **Ambulance Services Billed During Hospice: Unbundling**
  - **0122 - Outpatient Hospice Related Services: Unbundling**
    - Services related to a Hospice terminal diagnosis provided during a Hospice period are included in the Hospice payment and are not paid separately.
  - **0105 - Physician Services during Hospice Period**
    - Physician services billed during an active hospice period should be paid by the Hospice provider if services are related to the hospice beneficiary's terminal condition or if a physician is employed or paid under arrangement by the beneficiary's hospice provider. Medicare should not be billed for either of the aforementioned scenarios.

LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicaid RAC

- **April 6, 2021: Medicaid announces return of Medicaid RAC**
- **Health Management Systems (HMS)**
  - Contingency fee based contract … (Bounty Hunter)

SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
Healthy Connections MEDICAID

hms

LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicaid RAC

- HMS has several informational website pages
  - Overview of Audit process
  - Medical Record Requests (Electronic preferred)
  - Review Process
  - Appeals Process
  - Education and Outreach
    - https://www.scdhhs.gov/site-page/medicaid-recovery-audit-contractor
    - https://www.scdhhs.gov/press-release/south-carolina-recovery-audit-contractor-0

LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicaid RAC

- **HMS Reconsideration and Appeals**
  - Notification letter
  - Reconsideration process
  - Appeals: SCDHHS internal Division of Appeals and Hearings

https://www.scdhhs.gov/sites/default/files/ProviderOutreachandEducation_POS_%20SC%20RAC_04062021_FINAL.pdf

SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
Healthy Connections MEDICAID

LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicaid RAC : Billing Audits

- **Billing Audits**
  - Provider billing or coding errors
  - Failure to properly coordinate benefits
  - Overuse of services
  - Fraud or abuse
- HMS will review Medicaid claims submitted by providers and may request medical records as needed to substantiate the claims

LEADERSHIP
VOICE
INNOVATION
IMPACT

Medicaid RAC: Credit Balance Audits

- **Credit Balance Audits**: An analytical review of transactions affecting the financial accounts of selected Medicaid enrolled providers
  - **HMS Credit Balance Audits Process**
    - HMS will send monthly/quarterly letters to selected providers
    - Providers will send a self-report disclosing all credit balances
    - Designed to identify overpayments
  - ***Are you actively working all credit balances?***
    - https://www.scdhhs.gov/press-release/south-carolina-recovery-audit-contractor-0
    - https://www.scdhhs.gov/sites/default/files/HMS%20Credit%20Balance%20Audit%20Medicaid%20Overview%20-%20Updated%2004142021.pdf

Medicaid RAC: Credit Balance Audits

Monetary

- COB
- Retroactive Payments
- Duplicate Payments
- Incorrect Payments
- Cycle Billing Errors

Non-Monetary

- Inaccurate Postings
- Charges Written Off in Excess Amounts Actually Billed
- Provider A/R Collection Systems modeling net revenue at the time of billing

LEADERSHIP
VOICE
INNOVATION
IMPACT

Supplemental Medical Review Contractor ("SMRC")

- **Medicare SMRC**
- **Noridian Healthcare Solutions**

  - **Nationwide** medical reviews of Medicaid, Medicare Part A/B, and DMEPOS claims to determine whether claims follow coverage, coding, payment, and billing requirements
  - Focus of the medical reviews may include vulnerabilities identified by CMS data analysis, the Comprehensive Error Rate Testing (CERT) program, professional organizations, and Federal oversight agencies (OIG, GAO, CMS)
  - https://www.noridiansmrc.com/

LEADERSHIP
VOICE
INNOVATION
IMPACT

Supplemental Medical Review Contractor ("SMRC")

- Special projects to protect the Medicare Trust Fund
  - Can extrapolate
  - Even if not extrapolated, number of claims and related amounts may be high
  - Appeals process is the same as the CMS Administrative Appeal Process

Noridian Healthcare Solutions

https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/SMRC

LEADERSHIP
VOICE
INNOVATION
IMPACT

Supplemental Medical Review Contractor ("SMRC")

- The current **SMRC project list** updated April 7, 2022 and contains no projects related to hospice https://www.noridiansmrc.com/current-projects/
- **Completed project** for hospice claims in an Assisted Living Facility Setting for dates of service from January 1, 2018 - December 31, 2018 found a 38% error rate
  - **Common Denial Reasons**
    - Medical Necessity
    - No Response to the Documentation Request
    - No Documentation to Support Services as Billed
    - Initial Certification Not Signed by Physician
    - Missing or Invalid Physician on Certification of Terminal Illness
- **Current Projects** include **Telehealth** projects and **Home Health**

LEADERSHIP
VOICE
INNOVATION
IMPACT

CMS Targeted Probe and Educate ("TPE")

- **Conducted by MACs**
- **Targets identified by data review**
- **CMS: "Most providers will never need TPE"**
  - **Providers and suppliers** who have high claim error rates or unusual billing practices, and
  - **Items and services** that have high national error rates and are a financial risk to Medicare
    - IF you are considered compliant will not be audited

https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/Targeted-Probe-and-EducateTPE

LEADERSHIP
VOICE
INNOVATION
IMPACT

CMS Targeted Probe and Educate ("TPE")

- **Common issues:**

- **IF found compliant during audit, will not be audited on same topic for a year**
- **IF not compliant after 3 audits** and rounds of education: 100 percent prepay review, extrapolation, other action.
  - https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/Targeted-Probe-and-EducateTPE

CMS Targeted Probe and Educate (“TPE”)

- Search for Current Palmetto GBA topics: https://www.palmettogba.com/palmetto/jmb.nsf/DIDC/BTPOD0A22I~Medical%20Review~Targeted%20Probe%20and%20Educate

LEADERSHIP
VOICE
INNOVATION
IMPACT

CMS Targeted Probe and Educate ("TPE")

- Current Palmetto GBA TPE Audit Topics
  - **Review of inpatient claims for inpatient hospice care greater than or equal to 7 days** for revenue code 656 and place of service codes Q5004–Q5009
  - Review of **new hospice provider** claims
  - Review of **hospice claims for Non-Cancer Length of Stay** (NCLOS)

LEADERSHIP
VOICE
INNOVATION
IMPACT

Palmetto GBA
Post Payment Medical Reviews

PALMETTO GBA
A CELERIAN GROUP COMPANY

- **Palmetto GBA**, is the Medicare Administrative Contractor ("MAC") for Jurisdiction M, Part A, which includes South Carolina
- The MAC conducts medical review activities to identify inappropriate payments
  - Medical review is the collection of information and clinical review of medical records to ensure that payment is made only for services that meet all Medicare coverage, coding and medical necessity requirements
- **Medical review activities begin by the MAC's identification of potential billing errors through data analysis and/or complaints**

https://www.palmettogba.com/palmetto/jma.nsf/DID/9G7MNM1328

Unified Program Integrity Contractor ("UPIC")

- UPICs can identify **overpayments, extrapolate overpayments, and impose payment suspensions**
- **Extrapolated overpayments** can results in large overpayment numbers
- **Payment suspension**
  - Can be imposed if CMS or its contractors possess reliable information that an overpayment exists and in cases of suspected fraud (a credible allegation of fraud exists against a provider)
  - 42 USC § 405.371

LEADERSHIP
VOICE
INNOVATION
IMPACT

UPIC Focus: Potential Fraud

- Kickbacks
- Routine waiver of co-payments
- False certificates of medical necessity, plans of care, or other records
- Billing for services not rendered
- Misrepresenting the diagnosis to justify payment
- Beneficiaries sharing Medicare cards are just some of the more common schemes

http://www.safeguard-servicesllc.com/Home/faq

LEADERSHIP
VOICE
INNOVATION
IMPACT

Commercial and Managed Care Auditors and Prosecutors

- All Auditors Previously Discussed are State and Federal Government Auditors or Contractors of the Government
- However:
  - **Commercial and Managed Care** entities also audit frequently
  - And **prosecutors** can start investigations with Civil Investigative Demands/Subpoenas requesting documents and information

LEADERSHIP
VOICE
INNOVATION
IMPACT

Life of an Audit: Practical Tips

- Ensuring Timely Receipt of an Audit Request
- Initial Assessment of the Audit Request
- Producing a Complete and Organized Medical Record
- Analyzing the Audited Claims
- Building an Audit Response Team
- Adding Legal Arguments for Support

Ensuring Timely Receipt of the Audit Request

- ***Where*** are Requests arriving?
  - Consistent address?
  - Update address changes?
  - Timely handling?
  - *The case of the mishandled Request*

Initial Assessment of the Audit Request

- ***Who*** is it from?
  - Federal or State Healthcare Program?
  - Federal or State Healthcare Program Contractor?
  - Federal or State Managed Care?
  - Commercial payor?
  - Prosecutor?

LEADERSHIP
VOICE
INNOVATION
IMPACT

Initial Assessment of the Audit Request

- ***When** is the deadline*?
  - Set deadline?
  - Do you have a choice of deadlines?
    - Federal appeals – Stop recoupment or not?
  - Does the deadline fall on a weekend or holiday?

LEADERSHIP
VOICE
INNOVATION
IMPACT

Initial Assessment of the Audit Request

- ***What needs to be produced***?
  - Do more than medical records need to be produced?
    - Provider credentials
    - State licensure
    - Corporate documents
  - Understand the consequences of not producing
    - Recoupment
    - Lose appeal rights

LEADERSHIP
VOICE
INNOVATION
IMPACT

Initial Assessment of the Audit Request

- ***What*** does it mean?
  - Limited claims and exposure?
    - Routine audit / auditor
    - Limited number of claims
  - Extrapolation?
  - Potential payment suspension?
  - Fraud & Abuse?
    - Damages
    - Penalties
    - Criminal prosecution

LEADERSHIP
VOICE
INNOVATION
IMPACT

Producing the Medical Record

- **Ensure the production is complete**
  - *The case of the pathology specimen*
  - *The case of the multiple medical records systems*
  - Are attestations needed from providers to address deficiencies, such as missing signatures or dates
- **The well-organized record**
  - Can items be easily found by reviewers?
  - Bates stamp?
  - Hyperlinks?

LEADERSHIP
VOICE
INNOVATION
IMPACT

Analyzing the Audited Claims

- Analyze the records produced as quickly as possible
- Do your records support the claims billed?
  - If Yes
    - Vigorously defend and appeal
  - If No
    - Can it be cured by a supplemental production?

Analyzing the Audited Claims

- If No
  - What caused the problem?
  - Corrective actions
    - Overpayment refunds
    - Are additional reviews needed?
    - Education
    - Systemic fixes
    - Disciplinary actions

LEADERSHIP
VOICE
INNOVATION
IMPACT

Building an Audit Response Team

- Team Makeup Will Vary Based on Analysis of Audit Request
  - Clinicians
  - Administration / Leadership
  - Provider Support
  - Attorneys
  - Experts

Building an Audit Response Team

- **Internal Expert (Medical Director/Providers Involved in Care) vs. External Expert (or Both)**
  - Complexity
  - Cost
  - Availablity
  - Time away from clinical duties
  - Credentials of person who issued denials
  - Level of appeal

LEADERSHIP
VOICE
INNOVATION
IMPACT

Ways to Strengthen Medical Expert Reports

- Medical expert reports traditionally primarily focus on day-by-day activities in the medical record
  - Question: Can you beef up that expert report and add additional support for your claims?
- We use a Template approach with experts, to provide organized support for the clinical, technical, and legal issues

LEADERSHIP
VOICE
INNOVATION
IMPACT

Ways to Strengthen Medical Expert Reports

- **The Template approach**
  - *First, it does provide key clinical support*
    - Starts with summary of the expert opinion
    - Continues with summary of the patient
      - Paint the picture of the patient's condition during the hospice stay
    - Highlights providers who interacted with and knew the beneficiary
    - Cites to specific pages in the (well organized!) medical record for support

LEADERSHIP
VOICE
INNOVATION
IMPACT

Ways to Strengthen Medical Expert Reports

- **The Template approach**
  - *Second, it addresses auditor denial reasons head-on*
    - Issues with Face-to-Face?
      - Outlines technical requirements
      - Showcases what is in records
    - Custodial versus Skilled?
      - Refers back to reason for hospice eligibility
      - Showcases all reasons skilled services were needed
      - Highlights CMS' descriptions of "custodial" versus "skilled"

LEADERSHIP
VOICE
INNOVATION
IMPACT

Ways to Strengthen Medical Expert Reports

- **The Template approach**
  - *Third, addresses LCDs and technical issues, and adds peer reviewed support*
    - Did the auditor cite relevant / applicable LCDs
      - We have seen auditors citing inapplicable LCDs!
    - If the LCD does apply
      - Showcase how the LCD was met
    - Can also address any technical issues
    - Also can add peer-reviewed studies and other support for hospice care in this beneficiary's case
  - *Fourth – the Template can add support for Legal Arguments*

LEADERSHIP
VOICE
INNOVATION
IMPACT

Legal Arguments

- **Supporting and reinforcing expert**
  - Peer-reviewed studies and articles
  - Statutory and Regulatory Framework
  - Payor Manuals, Policies, etc.
- **Addressing technical denials**
  - Many technical denials should not undermine reimbursement for appropriate hospice care provided

Legal Arguments

- **LCDs**
  - Did the auditor choose applicable LCDs?
  - Building on expert report
- **Challenging statistical extrapolation**
  - If have realistic chance of overturning it
  - Possible additional expert

LEADERSHIP
VOICE
INNOVATION
IMPACT

Legal Arguments

- **Evolving Case law**
  - Value of the practitioner who saw the patient
    - Recognition that provider who examined and knew beneficiary was in better position to judge eligibility than retrospective reviewer
    - Expert clinical templates can highlight this too
  - Denials based on beneficiary stabilization or lack of suffering
    - Highlighting good hospice care!
    - Preventing trips to the ER, skin degradation, pressure sores, etc. is a sign of good care
  - Custodial vs. skilled care

LEADERSHIP
VOICE
INNOVATION
IMPACT

Legal Arguments

- **Evolving Case law**
  - *Escobar:* Fair value for value received
    - Focus on valuable services provided to beneficiaries
    - Should retain reimbursement for those services
  - *Escobar:* Materiality
    - If you have technical issues, were those material to the payment for the services?
  - Arguing for offsets

Questions?

Alice V. Harris

Aharris@nexsenpruet.com

Jenna K. Godlewski

Jgodlewski@nexsenpruet.com