

ZPICs Terrorize, Close Hospices; CMS Blesses Approach

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In recent months, ZPICs, tiring of the post-payment audit due process constraints imposed by Congress, have begun utilizing devastating and unlawful tools to put hospices, and presumably other providers, out of business – full payment suspension and full prepayment audit. CMS has now reviewed and blessed this conduct.

In the case of a longstanding Puerto Rican hospice, Hospicio Toque de Amor, a founder of the Puerto Rican Palliative Care Association, SafeGuard Services, LLC (aka ZPIC) started a post payment audit in May 2016. In September, before issuing any results, and without any advance notice, SGS placed Hospice on full payment suspension due to findings on five patients. The notice letter, issued after the suspension was imposed, did not allege fraud, but rather identified alleged lack of medical necessity as to these patients.

When Hospice objected in early October, SGS and CMS huddled for a month, before CMS issued a letter fully blessing ZPIC's conduct. Top CMS officials including Dr. Shantanu Agrawal and Mark Majestic, who lead up Program Integrity and Audit programs at CMS, signed off on this conduct.

Meanwhile, Hospice lacks funds to continue operating, is laying off personnel, and discharging its patients.

In the case of a Texas provider, Health Integrity LLC sent a one page letter indicating that it was placing Hospice on full prepayment review, the functional equivalent of a payment suspension, without any prior post payment audit work. This letter includes the cursory justification that the audit is based on unspecified data indicating "billing abberancies," and also contains no allegation of fraud. Hospice would not receive any payments going forward until at least 90 days or so after submitting a bill and presenting an ADR packet, assuming that ZPIC finds any such patient eligible. Lacking funds to operate, key employees left, forcing this hospice to close.

Congress authorized ZPICs to conduct post-payment audits to look for fraud. At the same time, responding to provider concerns, Congress established some basic protections, such as notice of audit, requirement for detailed findings, and an opportunity to review findings with auditor. Even where there are adverse findings, crucially, providers are entitled to deferral of recoupment through two levels of administrative review. 42 USC 1395ddd.

In the appeals process that follow ZPIC audits, ZPIC findings are reversed at stunning rates, showing that ZPIC findings are often not credible. These reversal rates confirm that due process protections are necessary. But, due process takes time. And, reversals embarrass the ZPICs, imperil their lucrative contracts, and, frustrate CMS officials responsible for finding “fraud, waste, and abuse.”

In cases of “credible evidence of fraud,” Congress authorized more extreme action, like payment suspension or full pre-payment review. 42 USC 1395y(o). Absent fraud, however, ZPICs are limited to post-payment review with notice.

When Congress establishes due process protections (notice of post payment audit, findings, no recoupment pending two levels of administrative review, and no payment suspension absent “credible evidence of fraud”), CMS and ZPICs must respect the law.

CMS’ Program Integrity Manual does not contemplate non-fraud activities like this by ZPICs. Instead, the PIM specifies that non-fraud pre-payment review be conducted by the contractors, starting with a probe edit and continuing incrementally through targeted medical review, if warranted by initial findings.

In Washington, requests for help from small providers are ignored, drowned out by louder voices and competing priorities. When providers go to court seeking the due process Congress promised, CMS pressures courts to dismiss such claims for lack of administrative exhaustion. Exhaustion is almost a good word for it; extinction is closer to the truth.

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