Reinhart

Medical Directors, Hospice Physicians – Importance of the Hospice Medical Director

POSTED:

Dec 31, 2004

RELATED PRACTICES:

[Health Care](https://www.reinhartlaw.com/practices/health-care)

https://www.reinhartlaw.com/practices/health-care

RELATED SERVICES:

[Hospice and Palliative Care](https://www.reinhartlaw.com/services/hospice-and-palliative-care)

https://www.reinhartlaw.com/services/hospice-and-palliative-care

Recently I have had the honor of collaborating with Jay Mahoney of the Summit Business Group and Larry Beresford, well known hospice journalist, on a publication entitled *One Patient One Day: Making Your Hospice A Leader In End-Of-Life Care*. This how-to manual provides down-to-earth advice about how to increase access to care and improve the hospice's ability to meet its mission in its own community. One of the key recommendations in this manual is that the hospice medical director be featured in an active important role within the hospice. Following is an excerpt taken from the manual outlining key considerations with regard to the role of the hospice medical director*.

> In its early days, hospice care in America was sometimes perceived as anti-physician—or at least alternative and definitely apart from mainstream medical care. The Medicare hospice benefit required designating a hospice medical director as a core member of the team. Often that role was filled by a volunteer, either a busy young doctor struggling to establish a fulltime medical practice or else an older physician easing into retirement—but not someone pursuing hospice medicine as a career. Gradually, hospices have come to recognize that the physician's role as an integral member of the core hospice team demands more than just lip service and rounds out the depth and quality of the hospice team.
>
> Over and over, successful hospices have shown that their growth is directly related to dedicating significant salaried time for a medical director who is skilled both in palliative pain and symptom management and in communications and relationship building with the local medical community.
>
> Even though the medical director's salary can be a significant expense, successful hospices say it more than pays for itself in the agency's growth. Some hospices use a rule of thumb that a full-time physician can be justified for an average daily census of 50 to 100 patients, with another FTE for each additional 100 patients. Some of the roles that can be filled by the activist hospice physician include:

All materials copyright © 2023 Reinhart Boerner Van Deuren S.C. All rights reserved.

- Overseeing clinical aspects of the hospice (as required by Medicare) and directing overall patient care policies.
- Medical education via formal rotations, fellowships and other mentoring opportunities.
- Accessible, skilled consultation to hospice staff and community physicians on difficult cases.
- Palliative care consultation outside of the Medicare hospice benefit.
- In-service training for hospice staff and CEU offerings to community physicians.
- Active participation in admission/eligibility/recertification decisions.
- Active participation in interdisciplinary team meetings.
- Home visits to hospice patients.
- A voice in agency administrative direction on the senior management team.
- Quality improvement and cost containment through activities such as drug formularies, protocol development and working with community physicians.

Growth Strategies:

1. Commit the resources—and then turn your doctor loose on physician relationship building, with the expectation that it will more than pay for itself in increased census and length of stay and improved professional relations.
2. Hire the right doctor. While specialized palliative care expertise and ability to consult on difficult symptom management questions are important, the ability to communicate and build effective professional relationships is equally important and harder to teach.
3. Different physicians have markedly different skill sets, whether in counseling, symptom management, education, marketing or administration. Take advantage of those particular skills—but be clear on your overall needs and proceed accordingly.
4. Be aware of local medical community politics. Depending on the community, it may be advisable to hire someone who already enjoys a high profile, political connections, a base at a

All materials copyright © 2023 Reinhart Boerner Van Deuren S.C. All rights reserved.

key local institution and the respect of his/her peers.
5. Prioritize and utilize the physician's valuable time thoughtfully and strategically. Some hospices have found that they have many more roles and needs for a medical director than hours in the day. Others have found it necessary to hire one or more additional part-time or full-time hospice physicians devoted to patient visits and teamwork, so that the medical director's time can be spent on administration, marketing, quality improvement, professional relations, etc. However, the medical director should still have some time for direct patient contact, to retain professional freshness and credibility. The medical director needs adequate administrative support.
6. Clarify with attending physicians how they want to utilize and relate to the hospice medical director. Some will welcome any assistance to make their jobs easier; others need reassurance that they won't lose control and responsibility for their patients.
7. Home and facility visits—face-to-face contact with hospice patients—can be an enormous asset and quality booster for the team, an expansion of comprehensive care and a great reassurance to patients.
8. Physician billing for non-hospice palliative care, if properly structured from a clinical and regulatory standpoint, using a Medicare physician provider number, can also be an important source of revenue to help the hospice offset the costs of the physician's salary. State corporate practice of medicine statutes may also constrain and define how the hospice, using the help of a health care attorney, needs to structure its physician billing practice.
9. Obtaining certification by the American Board of Hospice and Palliative Medicine is an essential source of credibility and should be a priority for any hospice physician.

Hospices should take the following steps to avoid liability and provide the best care to their patients:

- Educate medical directors about the duty they have to every patient, the standard of care they should meet and the understanding that they are responsible for the medical care

All materials copyright © 2023 Reinhart Boerner Van Deuren S.C. All rights reserved.

Reinhart

provided. Modify the medical director job description to accurately reflect understanding of this duty and standard.
- Provide medical directors with access to the patient's medical information upon admission and before the medical director signs the patient's certification form. Allow adequate time for the medical director to review medical information to make an informed decision before certifying the admission.
- Create guidelines for medical directors to reference when admitting a patient to hospice care. The guidelines should include fully informing patients about the role of the medical director in their care and the interdisciplinary team approach to planning care.
- Encourage discussions between medical directors and attending physicians about each patient and their specific needs and to clarify any ambiguities related to certification of the patient.
- Educate attending physicians on the concept of hospice care and the criteria used to make appropriate admission decisions.
- Educate health care professionals, patients and families about the hospice system of care and its goals. Explain criteria used to determine whether a patient is qualified for hospice care.
- Encourage the hospice medical director to make a home visit when significant questions are raised about admission certifications or recertifications.

The anti-kickback statute, section 11.28B(b) of the Social Security Act, makes it a criminal offense knowingly and willfully to offer, pay, solicit or receive any remuneration (i.e., anything of value) to induce referrals of items or services reimbursable by a federal health care program. There are also civil monetary penalties for violation of this statute. While not required for regulatory compliance, the federal safe harbor for management and services contracts provides an important safety net, both for hospices and for the physicians contracting with them. The safe harbor requires:

- A written, signed agreement specifying all of the services to be provided for the term of the agreement;
- For services that are "periodic," "sporadic" or "part time," the schedule of intervals, the precise length and the exact charge must be specified;

All materials copyright © 2023 Reinhart Boerner Van Deuren S.C. All rights reserved.

- A term of at least one year;
- Compensation set in advance, at fair market value, in an arms-length transaction;
- The compensation may not take into account the volume or value of referrals or business otherwise generated for which government payment is made.
- The agreement may not include any activity that violates any state or federal law;
- The aggregate services shall not exceed those necessary to accomplish the business purpose for which the contract was entered into.

As with any agreement, it is recommended that the hospice consult with its own legal counsel with regard to the terms of the agreement.

Billing for Physician Services

As hospices expand the roles for their medical director and other hospice physicians, devoting more of their time to direct clinical care, an opportunity emerges to generate significant income from billing for covered physician visits. Some hospices have hired multiple full-time physicians, some of whom are posted to homes or inpatient units to spend all of their time providing direct patient care services.

Generally billed through Medicare Part A as consultant or hospice-employed physician visits, these services are charged using the same CPT and ICD-9 codes that palliative care physicians use when making consultation visits and are paid at 100 percent of the allowable fee schedule. They are not included in the hospice per diem but do count against Medicare’s aggregate cap. However, in entering this new realm of billing, hospices must recognize new rules, new players and potential new landmines to avoid. Lack of experience could put the hospice at significant risk, so if there isn’t an existing knowledge base in-house, it may be helpful to look for outside consultants with specialized expertise in physician billing to train billing staff, implement quality processes, even do test audits on the quality, completeness and correctness of the physician billing.

Denise White, one such outside resource, is a New Jersey-based consultant who has done training and quality audits for hospices. "I

All materials copyright © 2023 Reinhart Boerner Van Deuren S.C. All rights reserved.

Reinhart

worked with one large hospice for two years. As they grew and we got control over one area of compliance, we'd move on to something else." The boundaries between Part B (attending physician) and Part A (hospice) billing and where the hospice-employed consulting physician fits may even present new issues and questions to Medicare intermediaries and carriers. That makes it important to work with them at the time of launching a new physician billing service and to get their answers in writing. "Be aware that whenever you start something new, it raises red flags," White notes. Be clear on documentation to support the necessity of the visit, whether the physician is the named attending and/or an employee (either paid or volunteer) of the hospice, and whether consultant billing is concurrent with billing by the attending.

Such monitoring of physician billing may be incorporated into the hospice's compliance program to document a good-faith effort to oversee physician billing as a compliance issue—which may be a mitigating factor if problems emerge later. "We do a baseline audit. Then, depending on the results, we provide education focused on deficiencies. We may come back in 60 to 90 days and re-audit, working toward a goal of annual review. When a new physician is hired, we go back and do another baseline," White says.

The hospice may also develop a charting checklist to help billing staff address all areas, and include it in the medical record. "It is so important to close all of the little paperwork gaps. Nobody is really all that knowledgeable in this area, which is growing rapidly," she says. Any hospice or physician practice looking at adding a new service should do some kind of financial prospectus. It may also be advisable to run it by the agency's health care attorney. Physician billing seminars are offered in many communities and can provide a general orientation, while the carrier also offers training and other educational resources.

The following checklist for providers was developed by White based on her work with hospices. Issues regarding hospice physician billing that require careful attention include:

- Confusion over the definition of a consultation and consult documentation guidelines.

All materials copyright © 2023 Reinhart Boerner Van Deuren S.C. All rights reserved.

- Development of a procedure to capture all services provided and ensure documentation in the record for services provided and billed.
- Understanding of the documentation requirements when counseling and coordination of care are used to account for time.
- Knowledge of incident-to services and corresponding guidelines.
- Non-physician practitioner (advanced practice nurse, physician's assistant) services.
- Documentation of chief medical complaint.
- Verification of Medicare secondary status.
- Use of proper diagnosis on each claim.
- Billing for Part B services.
- Proper billing for outside attending physician services.
- Understanding of documentation guidelines for evaluation and management services.
- Understanding of individual intermediary and carrier rules affecting a hospice physician provider or practice.

---

* For information regarding this publication, contact Summit Business Group, LLC, P.O. Box 130, Penfield, NY 14526, 800-689-6747, e-mail: jaymahoney@sbg-llc.com

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.

All materials copyright © 2023 Reinhart Boerner Van Deuren S.C. All rights reserved.