Profiteering: Putting Financial Goals ahead of Quality Care for the Terminally Ill: Part One of Two

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Is it time to disrupt the Medicare Hospice Benefit to preserve the legacy of hospice?

Congress approved the Medicare Hospice Benefit in 1981 to create an alternative to conventional curative treatment by providing quality, patient-centered, family-centered care for the terminally ill. The creation of the benefit was based on an unspoken covenant that care providers would utilize those Medicare dollars wisely. The benefit was focused on maintaining the comfort and dignity of the patient, as originally envisioned by the founder of the modern hospice movement, Dame Cicely Saunders.

But what happens to the good faith implicit in the Medicare Hospice Benefit when end-of-life care becomes a vehicle for corporate profiteering rather than a mandate to provide exceptional care to vulnerable patients and families?

The term "profiteering" refers to the act of making an unfair profit by taking advantage of a situation and exploiting someone unjustly. This practice is cited as a cause of inflated costs across the entire U.S. healthcare system. When profiteering is the primary business model used by those entrusted with caring for the dying, using aggressive systems to implement practices to avoid cost and increase profits, it raises questions regarding intent and vulnerability of those being served.[1] To be clear, the question addressed by this paper does not place blame specifically on the corporate business structure of hospices—whether for-profit or not-for-profit. It does deal with the underlying business strategies of certain hospice providers who put financial goals ahead of quality care for the terminally ill. This paper will explore profiteering practices utilized by certain hospices and the subsequent impact of those practices on the viability of the Medicare Hospice Benefit itself.

Part 2 (to be published at a later date) will explore the effect of profiteering on patient care and community-based, mission-driven, patient-centered hospices.

Financial Manipulation, Limiting Care and Services to Maximize Revenue

The unique structure of the Medicare Hospice Benefit, an all-inclusive benefit that reimburses providers on a per diem basis, has created the opportunity for exploitation through a number of profiteering practices. By accepting the per diem payment, hospices are responsible for all expenses related to the hospice patient's terminal diagnosis, including the hands-on care of nurses, nurses aides, social workers, chaplains and physicians; medical equipment; medical supplies; and prescription and over-the-counter medications. Providers can maximize profits either by limiting the services provided, admitting patients who require minimal care, increasing the number of days of care each patient receives—or a combination of these factors. In profit-focused hospices, the number of visits a patient receives, the amount and type of care provided, and the diagnoses of the patients admitted all can determine potential revenues and profit margins. A profit-maximizing business model does not necessarily factor in the needs of the patient, the patient's family, the healthcare community and the community are large.[2]

For example, two troubling reports issued by the Office of Inspector General (OIG) of the Centers for Medicare & Medicaid Services (CMS)[3] in the summer of 2019 garnered widespread media coverage because of shocking stories of negligent care and performance deficiencies detailed in the report. Poor management of pain, missed visits, lack of quality controls, and inadequate vetting and training of staff were just some of the problems noted in the report—problems that were compounded by weak oversight from CMS. The adoption by certain providers of a business model based on cutting corners on appropriate care to maximize profit largely has gone unrecognized and unpunished in the past. It, nevertheless, is an abuse of public funds intended for the compassionate care of the dying and it also is a betrayal of the good faith and trust placed in the hospice community through the creation of the Medicare Hospice Benefit.

There are also numerous examples in the OIG reports and elsewhere of hospices enrolling patients who are likely to have very long lengths of stay while requiring minimal care.[4] In addition, some hospices have been found to discharge patients when they require more care.[5] The malicious intent to maximize profit is evident in these business strategies, which results in a shifting of dollars intended for the care of the dying to the coffers of profit-focused organizations.

Many of these profit-focused hospices often don't even make the effort to hide their focus on profit-making. For example, Rich Tinsley, president of a healthcare mergers and acquisitions firm, in April of 2018 lamented, "Margins in hospice also could be within the 15 to

20% range, though few in the industry are hitting that mark. Nonprofit hospice providers still make up a significant portion of the space, which may be one reason margins aren't as high, as organizations aim to fulfill their missions rather than turn a profit."[6] Some hospices even have a rage-inducing view of the cost of doing business. Commenting on a $75 million fraud settlement, the CEO of Vitas, one of the nation's largest hospice companies, stated, "The $75 million settlement over a decade of billings should be kept in perspective with more than $1 billion in annual revenue at the nation's largest hospice provider."[7] These statements give the impression that not only should profits be higher, but that some costs are worth the risk when weighed against the potential for substantial revenue gains.

"For those of us in the hospice movement who have devoted ourselves to the mission of delivering quality care to the dying, the 2019 OIG reports, as well as older, similar reports, are more than troubling and discouraging. When these official reports are combined with the boastful comments from companies about their profit-making strategies, we're shocked—and dismayed—that we haven't seen greater, more concentrated efforts to limit profiteering and curb these acts of maleficence," said Jeff Lycan, president of the National Hospice Cooperative (NHC). All of the ethical underpinnings of our society come into play when we talk about care at the end of life," Lycan continued. "It involves the right to quality, compassionate care, recognizing the vulnerability of the patient and family, and the responsibility of the provider to deliver appropriate care. These are the values that are under fire when profit-making is prioritized over patient care."

The 2019 OIG reports were issued five years after The Washington Post began publishing a year-long, intermittent series, "Business of Dying,"[8] which, among other issues, examined the business practices of profit-focused hospices. The data analysis in The Washington Post study, which was based on hundreds of thousands of Medicare patient and hospice records, showed a striking and consistent gap between for-profit and not-for-profit providers. Based on the data, The Washington Post concluded that the typical for-profit hospice company:

- Spends less on nursing care per patient;
- Is less likely to have sent a nurse to a patient's home in the last days of life;
- Is less likely to provide more intense levels of care (general inpatient care and continuous or crisis care) for patients undergoing a crisis; and
- Has a higher percentage of patients who are discharged from hospice care before dying. High rates of patient discharges are often seen as a sign that patients were either pushed out of hospice by a hospice provider when the patients' care grew too expensive, dissatisfied with the care being provided or enrolled in hospice even though they were not eligible for end-of-life care.

The Threat to the Hospice Community

The dying process is uncertain and unpredictable. In caring for dying patients, hospices may spend more than the per diem rate to meet the needs of some patients experiencing a spike in pain and other symptoms or who are actively dying. And hospices may spend less than the per diem rate in caring for more stable patients. Hospice providers committed to meeting the community's broad need for quality end-of-life care will overspend on some patients knowing that others will require less costly services. The Medicare Hospice Benefit, as it stands today, requires this balancing act to provide the highest level of patient care. This balance of care, however, is upset when profit-focused hospice companies compete for patients requiring less care and discharge those with more expensive care requirements.[9]

This places many not-for-profit hospice providers at risk due to a financial imbalance in the ratio between patients needing more care and patients requiring less care. Some may have to make difficult choices about the number of patients with expensive needs they can admit, the breadth of the service area they can cover and the scope of non-covered services like grief and bereavement they can offer. The risk is that the overall quality of care provided to patients begins to erode because of inequities in coverage choices and reimbursement. The risk is particularly exacerbated, as indicated in the OIG reports, when too many dollars flow into the pockets of the owners of for-profit hospice companies rather than toward the needs of dying patients.

If this trend continues, hospice will move farther from the original mission envisioned when the nation's first community-based hospice opened its doors in 1974. If the profit-focused business model prevails, we'll undoubtedly see the hospice sector become less relevant and more unstable due to a broken financial model, a financial model that does not align with the broad needs of the target population. In that broken future, large numbers of patients who are not truly eligible for hospice care could receive minimal care for long periods of time while dying patients with high needs will be discharged from care before their cost of care becomes a threat to profits. As a result, terminally ill patients will lose, the entire healthcare system will lose, but investors and shareholders of all types of profit-focused hospices most assuredly will win. The threat to the hospice mission is real and should concern all responsible hospice providers, both for-profit and not-for-profit.

The Threat to the Medicare Hospice Benefit

When the Medicare Hospice Benefit initially was established, Congress noted several reservations, including cost-efficiency, fair and equitable reimbursements, and adequate financing.[10] These concerns still influence ongoing support for the Medicare Hospice Benefit and are the basis of periodic legislative and regulatory reevaluations of the program.

The long-term sustainability of the hospice benefit is under threat, not only from issues of inadequate quality of care, but also from fraudulent billing practices by some hospice organizations. The OIG has cited numerous instances of fraud schemes. Some hospice companies enroll ineligible patients, pay recruiters to solicit ineligible beneficiaries and/or pay physicians to falsely certify patients as hospice eligible.[11] While the OIG has investigated and fined many of these companies, reports of fraudulent billing practices continue to grow and pose a significant risk to the Medicare hospice budget and the care it funds for terminally ill patients and their families. [12 13]

Another concern is when some investor-owned hospice companies report profit margins of 15–20 percent—or higher. High profit margins create the false impression that Medicare may be paying too much for hospice care. There is a substantial probability that CMS could choose to lower reimbursements to reduce such unseemly profit margins. As a result, the patient-centered hospices that already bear the burden of the sickest and costliest patients and that subsist on the thinnest of profit margins will receive even less revenue to cover the care they provide. Profiteering practices thus create a vicious cycle of self-consumption that eventually could destroy the Medicare funding that provides 90 percent of end-of-life care in the United States.

Conclusion

While this paper is not specifically about ownership status of the nation's 5,000 Medicare-certified hospices, many of the markers used to evaluate the quality and cost effectiveness of hospice ultimately demonstrate the divide between how for-profit and not-for-profit hospices operate. The Medicare Payment Advisory Committee (MedPAC) notes the difference in for-profit and not-for-profit margins in its annual reports to Congress. For example, in its March 2019 report, MedPAC stated that the margins of for-profit companies ranged from 16.8 to 17.6 percent, while the margins of not-for-profit providers ranged from 2.7 to 6.4 percent.[14]

"For mission-driven hospices, numbers like these are worrying—and bordering on dangerous," Lycan warned. "Even the concept of 'total cost of care per day' is a somewhat biased indicator in the MedPAC report if we consider profiteering as a motive. MedPAC should move to measuring the Medicare Spend per Beneficiary (MSPB) to incorporate the effects of live discharge rates, post hospice emergency room and hospitalization," he added.

The for-profit average cost per patient per day is $133; the not-for-profit cost per patient per day is $170. The Medicare Hospice Benefit, however, pays a per diem rate that is the same for all hospices—regardless of ownership status. From the perspective of those who look at healthcare spending as an entitlement that needs to be cut, the data appear to make a compelling case for a significant reduction in the Medicare Hospice Benefit per diem reimbursement. But if the focus is quality of care and meeting demonstrated community need for comprehensive end-of-life care, then the real question is whether $133 per day is far too low a figure. Are the much higher margins of the profit-focused hospices an indicator of more efficient care or the result of high live discharge rates and shunning of costs? Or are those higher margins an indicator of care that falls below—sometimes well below—the values that are at the heart of the Medicare Hospice Benefit?

"When the sickest and most vulnerable individuals of our society are exploited for financial gain, everyone loses. In a competitive marketplace that is dominated by profiteering, the patient-centered hospice that prioritizes compassionate and dignified care of the dying eventually will not be able to survive," cautioned Lycan. The Medicare Hospice Benefit itself will be consumed by the profiteering of for-profit hospices—the inevitable decline in quality and scope of care ultimately will lead to the benefit's demise. These are real threats to the terminally ill and the mission-driven hospices that formed the hospice movement and have set the standard for quality, compassionate, timely end-of-life care for more than 40 years. As a result, these are threats to the Medicare Hospice Benefit itself.

These threats must be addressed now before it is too late to preserve the legacy of Cicely Saunders, whose simple goal was to help people "die peacefully" and "to live until they die."

Profiteering as a business strategy of certain for-profit hospices eventually could destroy hospice as we know it, threatening not just quality, compassionate end-of-life patient care but also the community-based, mission-driven, patient-centered hospice organizations that built hospice care across America. This will be the focus of Part 2 of this report.

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About National Hospice Cooperative

Our mission is to provide world-class, business support services, maximizing financial and process efficiencies to empower community-based, not-for-profit hospice providers to focus their resources on the delivery of quality care.

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