

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**CMS'S RELIANCE ON
ACCREDITATION SURVEYS COULD
NOT ENSURE THE QUALITY OF
CARE PROVIDED TO MEDICARE
HOSPICE BENEFICIARIES BY
THE COMMUNITY HOSPICE, INC.**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Deputy Inspector General
for Audit Services**

**June 2015
A-02-11-01027**

Office of Inspector General

<http://oig.hhs.gov>

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EXECUTIVE SUMMARY

CMS's reliance on accreditation surveys could not ensure the quality of hospice care provided to Medicare beneficiaries by The Community Hospice, Inc.

WHY WE DID THIS REVIEW

Hospice care is a program of palliative care that provides for the physical, emotional, and spiritual care needs of a terminally ill patient and his or her family. Hospices must comply with Federal and State requirements to ensure that hospice care is furnished by qualified workers. Prior Office of Inspector General (OIG) reviews of personal care services found that services were provided by personnel who did not meet State requirements. OIG is performing reviews in various States to determine whether similar vulnerabilities exist at hospices.

The objective of this review was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on accreditation surveys of The Community Hospice, Inc. (Community), ensured quality of care and that adequate protection was provided to Medicare beneficiaries.

BACKGROUND

A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. Hospice care can be provided to individuals in a home, hospital, nursing home, or hospice facility.

The Social Security Act (the Act) includes requirements that are intended, in part, to ensure the quality of care provided to Medicare beneficiaries in hospices. Federal regulations set the standards that hospices must comply with to participate in the Medicare program, including that hospices must comply with all Federal, State, and local laws and regulations related to the health and safety of patients (42 CFR § 418.116). Medicare providers must also ensure that services are of a quality that meets professionally recognized standards of health care (42 CFR § 1004.10(b)).

In New York, CMS contracts with the New York State Department of Health (health department) to conduct certification surveys of hospices. The surveys determine whether hospices meet Medicare health, safety, and program standards, as well as Federal and State requirements related to personnel qualifications. However, section 1865(a)(1) of the Act exempts providers from such surveys if they are "accredited" by a CMS-approved national accreditation organization.

Community, a hospice based in Rensselaer, New York, opted to have the Community Health Accreditation Program (CHAP), an organization recognized by CMS, conduct its accreditation surveys. At the time of our fieldwork, CHAP last completed an accreditation survey at Community on April 17, 2009.

HOW WE CONDUCTED THIS REVIEW

We limited our review to Community personnel who provided direct care to hospice beneficiaries. Specifically, we selected a random sample of 100 workers employed by Community on June 30, 2011. However, our review of the personnel records disclosed that three of the sampled workers were volunteers whose responsibilities did not include direct patient care. Therefore, we excluded these individuals from further review.

WHAT WE FOUND

CMS's reliance on accreditation surveys could not ensure the quality of hospice care that Community provided to Medicare beneficiaries. Specifically, we found that Community did not meet certain Federal and State requirements for criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations. Of the 100 workers in our random sample, Community could not document that 51 complied with 1 or more of these requirements. On the basis of our sample results, we estimated that 194 workers were not in compliance with Federal and State requirements.

The April 2009 CHAP accreditation survey did not find any of the types of deficiencies identified in this report; therefore, CMS's reliance on CHAP surveys could not ensure quality of care and that adequate protection was provided to Medicare beneficiaries.

WHAT WE RECOMMEND

To improve protection provided to Medicare hospice beneficiaries, we recommend that CMS work with CHAP and the health department to ensure that Community meets all Federal and State requirements for criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations.

HEALTH DEPARTMENT COMMENTS

In its written comments on our draft report, the health department stated that it has no oversight authority over CHAP and that it does not survey Community, as Community has been deemed to meet Medicare conditions of participation. The health department also stated that it will continue to investigate any complaints alleged against Community and work with CMS on any remedies that are determined to appropriately address the findings in this report.

CMS COMMENTS

In its written comments on our draft report, CMS concurred with our recommendation.

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INTRODUCTION

WHY WE DID THIS REVIEW

Hospice care is a program of palliative care that provides for the physical, emotional, and spiritual care needs of a terminally ill patient and his or her family. Hospices must comply with Federal and State requirements to ensure that hospice care is furnished by qualified workers. Prior Office of Inspector General (OIG) reviews of personal care services found that services were provided by personnel who did not meet State requirements. OIG is performing reviews in various States to determine whether similar vulnerabilities exist at hospices.

OBJECTIVE

Our objective was to determine whether the Centers for Medicare & Medicaid Services' (CMS) reliance on accreditation surveys of The Community Hospice, Inc. (Community), ensured quality of care and that adequate protection was provided to Medicare beneficiaries.

BACKGROUND

The Medicare Hospice Benefit

Title XVIII of the Social Security Act (the Act) established the Medicare program, which provides health insurance coverage to people aged 65 and over, people with disabilities, and people with end-stage renal disease. CMS administers the Medicare program. Medicare Part A, also known as Hospital Insurance, covers hospice services provided to eligible beneficiaries (section 1812(a)(4) of the Act).

A hospice is a public agency, private organization, or a subdivision of either that is primarily engaged in providing care to terminally ill individuals. An individual is considered to be terminally ill if the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. Hospice care can be provided to individuals in a home, hospital, nursing home, or hospice facility. Hospice services include, but are not limited to, nursing care, home health aide services, physical therapy, social worker services, and spiritual care.

Federal and State Requirements for Hospices and Hospice Workers

The Act includes requirements that are intended, in part, to ensure the quality of care provided to Medicare beneficiaries in hospices. Federal regulations require hospices to comply with all Federal, State, and local laws and regulations related to the health and safety of patients (42 CFR § 418.116). Medicare providers must also ensure that services are of a quality that meets professionally recognized standards of health care (42 CFR § 1004.10(b)). In addition, hospices must maintain the records necessary to administer the program (42 CFR § 418.310).

Federal regulations set forth conditions of participation related to professional licensing, criminal background checks, and training that all hospices must comply with (42 CFR §§ 418.114(a) and (d), 418.100(g), and 418.76(d)).

New York State laws and regulations also describe certain requirements that hospices and hospice workers must meet. Specifically:

- health care professionals must meet State licensing requirements (New York State Education Law, Title VIII);
- hospice workers must undergo an annual health assessment (10 New York Codes, Rules & Regulations (NYCRR) § 793.5(d)(5));
- hospices must annually assess the performance and effectiveness of all workers (10 NYCRR § 793.5(j)); and
- hospices must maintain personnel records for all workers that include, among other items, professional licenses, documentation that workers met qualifications for the duties assigned, health assessments, and performance evaluations (10 NYCRR § 793.5(g)).

Certification Surveys of Hospices in New York

In New York, CMS contracts with the New York State Department of Health (health department) to conduct certification surveys of hospices. The surveys determine whether hospices meet Medicare health, safety, and program standards, as well as Federal and State requirements related to personnel qualifications. However, section 1865(a)(1) of the Act exempts providers from such surveys if they are “accredited” by a CMS-approved national accreditation organization. For an accreditation organization to be an acceptable alternative to a survey certification agency, the scope of its reviews must encompass the scope of the State survey agency’s reviews.

The Community Health Accreditation Program (CHAP) is recognized by CMS to conduct accreditation surveys of hospice providers.¹

The Community Hospice, Inc.

Community, a hospice provider based in Rensselaer, New York, serves 7 counties throughout upstate New York and employs nearly 400 healthcare workers, including physicians, nurses, social workers, chaplains, and home health aides. Community opted to have CHAP conduct its accreditation surveys. At the time of our fieldwork, CHAP last completed an accreditation survey at Community on April 17, 2009.

¹ Hospices accredited by CHAP, as of April 20, 1999, are deemed to meet Medicare conditions of participation and are Medicare-participating hospices. CHAP conducts accreditation surveys every 3 years.

HOW WE CONDUCTED THIS REVIEW

We limited our review to Community personnel who provided direct care to hospice beneficiaries. Specifically, we selected a random sample of 100 workers employed by Community on June 30, 2011. However, our review of the personnel records disclosed that three of the sampled workers were volunteers whose responsibilities did not include direct patient care. Therefore, we excluded these individuals from further review.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, Appendix B contains our statistical sampling methodology, and Appendix C contains our sample results and estimates.

FINDINGS

CMS's reliance on accreditation surveys could not ensure the quality of hospice care that Community provided to Medicare beneficiaries. Specifically, we found that Community did not meet certain Federal and State requirements for criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations. Of the 100 workers in our random sample, Community could not document that 51 complied with 1 or more of these requirements.

Of the 51 workers for whom Community's personnel records were deficient, 14 were deficient for more than 1 reason. Specifically, Community's records did not contain documentation to support that:

- 30 workers underwent a criminal background check,
- 20 workers had an annual health assessment,
- 2 workers met professional licensing and experience requirements,
- 9 workers met training requirements, and
- 4 workers received an annual performance evaluation.

On the basis of our sample results, we estimated that 194 workers were not in compliance with Federal and State requirements.

The April 2009 CHAP accreditation survey did not find any of the types of deficiencies identified in this report.

CRIMINAL BACKGROUND CHECKS NOT CONDUCTED

Hospices are required to obtain criminal background checks on all personnel who have direct patient contact or access to patient records (42 CFR § 418.114(d)(1)).² This requirement applies to all current paid employees, volunteers, and contracted employees, as well as any new employees.³

For 30 sampled workers, Community's records did not contain documentation that it had performed a criminal background check. Twenty-seven of these workers were hired before 2001, and according to Community, background checks were not performed on individuals hired before that date. For the other three workers, Community did not provide any documentation to show that it had performed background checks on these individuals.

ANNUAL HEALTH ASSESSMENTS NOT PERFORMED

For 20 sampled workers, Community's records did not show that these workers underwent an annual health assessment. In some cases, assessments were performed almost 2 years apart. Hospices must ensure their employees undergo an annual health assessment and are required to maintain documentation of the annual assessment (10 NYCRR §§ 793.5(d)(5) and (g)).

PROFESSIONAL LICENSING AND EXPERIENCE REQUIREMENTS NOT MET

For two sampled workers, Community's records did not contain documentation that New York State professional licensing and experience requirements were met. Specifically:

- One worker was hired in November 2009 as a coordinator of volunteer services. In April 2010, the worker accepted an offer to become a social worker for Community; however, the worker was not licensed to practice social work in New York until July 2010. All professionals who furnish services for a hospice must be legally authorized (licensed, certified, or registered) in accordance with applicable Federal, State, and local laws (42 CFR § 418.114(a)). In New York, a master social worker must obtain a license before being authorized to practice master social work (Title VIII, New York State Education Law, Article 154, §§ 7702(2) and 7704).
- One worker did not meet State experience requirements for a hospice nurse coordinator. Specifically, the worker had only 8 months of experience in a supervisory position before being promoted to a hospice nurse coordinator. In New York, a hospice nurse coordinator is defined as an individual with a minimum of 2 years of experience in a supervisory or administrative position in the nursing services field (10 NYCRR § 700.2(b)(49)).

² In the absence of State requirements, criminal background checks must be obtained within 3 months of the date of employment (42 CFR § 418.114(d)(2)).

³ 73 Fed. Reg. 32088, 32161 (June 5, 2008).

TRAINING REQUIREMENTS NOT MET

For nine workers (hospice aides), Community's records did not show that the aides received the minimum number of hours of inservice training. Hospice aides must receive at least 12 hours of inservice training during each 12-month period, and the hospice must maintain documentation demonstrating compliance with this requirement (42 CFR § 418.76(d)).

EMPLOYEE PERFORMANCE EVALUATIONS NOT CONDUCTED

For four workers, Community's records did not show that it had evaluated the worker's performance. Hospices must annually assess the performance and effectiveness of all workers and maintain performance evaluations in the workers' personnel files (10 NYCRR §§ 793.5(j) and (g)).

CMS'S RELIANCE ON ACCREDITATION SURVEYS COULD NOT ENSURE THE QUALITY OF CARE PROVIDED TO MEDICARE BENEFICIARIES

CMS relied on CHAP's accreditation surveys of Community. However, we found that Community did not always meet certain Federal and State requirements for criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations. The April 2009 CHAP accreditation survey did not find any of the types of deficiencies identified in this report; therefore, CMS's reliance on CHAP surveys could not ensure quality of care and that adequate protection was provided to Medicare beneficiaries. Because Community did not ensure that its workers met certain requirements related to criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations, it could not adequately ensure the health and safety of Medicare beneficiaries.

RECOMMENDATION

To improve protection provided to Medicare hospice beneficiaries, we recommend that CMS work with CHAP and the health department to ensure that Community meets all Federal and State requirements for criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations.

HEALTH DEPARTMENT COMMENTS

In its written comments on our draft report, the health department stated that it has no oversight authority over CHAP and that it does not survey Community, as Community has been deemed to meet Medicare conditions of participation. The health department also stated that it will continue to investigate any complaints alleged against Community and work with CMS on any remedies that are determined to appropriately address the findings in this report.

The health department's comments are included in their entirety as Appendix D.

CMS COMMENTS

In its written comments on our draft report, CMS concurred with our recommendation. CMS's comments are included in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered 381 individuals who were employed by Community on June 30, 2011. This included workers who provided direct care to Community beneficiaries and volunteers who performed a variety of administrative and patient care duties.

We did not assess Community's overall internal control structure. Rather, we limited our review of internal controls to those applicable to our objective.

We performed our fieldwork at Community's office in Rensselaer, New York.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws and regulations,
- met with health department and CMS officials to gain an understanding of the certification and accreditation survey processes,
- obtained and reviewed CHAP's latest accreditation survey report for Community as well as Community's corrective action plan;
- obtained a sampling frame of 381 individuals employed by Community on June 30, 2011,
- selected a simple random sample of 100 workers from the sampling frame,
- excluded 3 volunteers from further review because their responsibilities did not include providing direct care,
- reviewed the personnel records for each of the remaining 97 workers to determine compliance with Federal and State requirements,
- estimated the total number of workers that were not in compliance with Federal and State requirements, and
- provided the results of our review to health department and CMS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: STATISTICAL SAMPLING METHODOLOGY

POPULATION

The population consisted of all individuals employed by Community on June 30, 2011 (hospice workers).

SAMPLING FRAME

The sampling frame was an Excel file containing 381 hospice workers. Community officials extracted the file of hospice workers from Community's Human Resource Information System.

SAMPLE UNIT

The sample unit was one hospice worker.

SAMPLE DESIGN

We used a simple random sample to determine compliance with Federal and State requirements.

SAMPLE SIZE

We selected a sample of 100 hospice workers for review.

SOURCE OF THE RANDOM NUMBERS

We generated the random numbers with the Office of Inspector General, Office of Audit Services (OAS), statistical software.

METHOD FOR SELECTING SAMPLE ITEMS

We consecutively numbered the items in the sampling frame. After generating 100 random numbers, we selected the corresponding sampling frame items.

ESTIMATION METHODOLOGY

We used the OAS attribute appraisal program to estimate the total number of hospice workers not in compliance with Federal and/or State requirements.

APPENDIX C: SAMPLE RESULTS AND ESTIMATES

Sample Details and Results

Number of Hospice Workers in Frame	Sample Size	Number of Noncompliant Hospice Workers
381	100	51

Estimated Number of Noncompliant Hospice Workers *(Limits Calculated for a 90-Percent Confidence Interval)*

Point estimate	194
Lower limit	166
Upper limit	222

APPENDIX D: HEALTH DEPARTMENT COMMENTS



Department
of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 4, 2015

Mr. James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
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New York, New York 10278

Ref. No: A-02-11-01027

Dear Mr. Edert:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-11-01027 entitled, "CMS's Reliance on Accreditation Surveys Could Not Ensure the Quality of Care Provided to Medicare Hospice Beneficiaries by The Community Hospice, Inc."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko
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**New York State Department of Health
Comments on the
Department of Health and Human Services
Office of Inspector General
Draft Audit Report A-02-11-01027 entitled
“CMS’s Reliance on Accreditation Surveys Could Not Ensure the
Quality of Care Provided to Medicare Hospice Beneficiaries by
The Community Hospice, Inc.”**

The following are the New York State Department of Health’s (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-11-01027 entitled, “CMS’s Reliance on Accreditation Surveys Could not Ensure the Quality of Care Provided to Medicare Hospice Beneficiaries by The Community Hospice, Inc.”

Recommendation #1:

To improve protection provided to Medicare hospice beneficiaries, we recommend that CMS work with CHAP and the health department to ensure that Community meets all Federal and State requirements for criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations.

Response #1

The Department appreciates the opportunity to comment on this draft audit and thanks the OIG for bringing these issues to our attention. The Department has no oversight authority over the Community Health Accreditation Program (CHAP). In addition, the Department does not survey the operations of the Community Hospice (CH), as the CH is a deemed provider. The Department will continue to investigate any complaints alleged against the CH, and will work with CMS on any remedies that are deemed appropriate relative to these audit findings.

APPENDIX E: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

MAY 21 2015

200 Independence Avenue SW
Washington, DC 20201

To: Daniel R. Levinson
Inspector General
Office of the Inspector General

From: Andrew M. Slavitt 
Acting Administrator
Centers for Medicare & Medicaid Services

Subject: CMS's Reliance on Accreditation Surveys Could Not Ensure the Quality of Care Provided to Medicare Hospice Beneficiaries by The Community Hospice, Inc. (A-02-11-01027)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report. CMS is committed to ensuring Medicare and Medicaid beneficiaries receive high quality health care.

Section 1865(a)(1) of the Social Security Act permits providers and suppliers that are accredited by a national accrediting organization (AO) whose program has been approved by CMS to be "deemed" to meet the applicable Medicare conditions for that provider or supplier type (otherwise known as "deeming authority"). For such providers and suppliers, the State Survey Agency (SA), such as the New York State Department of Health (NYSDH), does not conduct a survey to certify or recertify the compliance of these facilities with the applicable conditions. Rather, such facilities remain under the jurisdiction of the AO for oversight, unless the SA conducts a validation or complaint survey at the direction of CMS. CMS may require a survey of a deemed provider or supplier to validate the AO's accreditation process, which also includes responding to substantial allegations of noncompliance (complaints). The Community Hospice, Inc. (Community) opted to have the Community Health Accreditation Program (CHAP), an AO with a Medicare approved program, conduct its accreditation surveys.

CMS is currently reviewing the OIG's findings in its report that Community did not meet certain Federal and State requirements and will request a complaint investigation of those findings by NYSDH if indicated. If a complaint investigation is conducted on the hospice and deficient practices are identified, the hospice will be required to provide a plan of correction for all deficient practices. A failure by the hospice to make the necessary corrections and regain compliance with the Conditions of Participation could result in the termination of its Medicare provider agreement, regardless of the hospice's continued accreditation status with the AO.

OIG Recommendation

The OIG recommends that CMS work with CHAP and the State health department to ensure that Community meets all Federal and State requirements for criminal background checks, health assessments, professional licensing and experience, training, and performance evaluations.

CMS Response

CMS concurs with this recommendation. CMS will continue to work with NYSDH and CHAP to reinforce the adherence to Federal and State requirements. While federal and AO surveyors cannot enforce state laws, CMS is supportive of New York's own efforts to do so.

CMS monitors recognized national AOs and their CMS-approved accreditation programs on an ongoing basis. When issues are identified, we work with the AO to resolve the issues. In FY 2009, CMS was aware of issues at CHAP. As a result, CMS opened a deeming authority review in accordance with the requirements at 42 CFR §488.8(f). CMS worked intensively with CHAP for an 18 month time period to monitor their progress and resolve the issues. CMS closed the deeming authority review once CHAP demonstrated sustained compliance with Medicare requirements.

CHAP conducted Medicare accreditation surveys of Community in April 2012 and 2015. CMS has historically required AOs to maintain a three year interval between accreditation surveys.