Frequently Asked Questions Regarding Hospice Care in America, 2022

*Response to article in *The New Yorker* and segment of KERA *Think* Podcast:
https://www.newyorker.com/magazine/2022/12/05/how-hospice-became-a-for-profit-hustle
https://beta.prx.org/stories/401919

1. **Oversight/fraud/abuse:**

How prevalent are fraud and abuse in hospice?

- **From NHPCO (National Hospice and Palliative Care Organization**): There are more than 6,000 nonprofit and for-profit Medicare certified hospice entities across the U.S. and last year, more than 1.6 million Medicare beneficiaries chose hospice for their end-of-life care. The vast majority of hospices are providing the high-quality, patient-centered care that people want, and they are carefully following all of the regulations for how to provide that care.
- Unfortunately, as with all parts of the healthcare system, unscrupulous actors find opportunities for abuse in hospice.
- It's important to note that the individuals behind these unethical agencies are not focused on the mission of hospice, but rather exist on paper and likely have no experience in delivering end-of-life care to patients and their families.
- On the other hand, many hospice staff consider it a mission, a calling, a purpose.
- True hospices – who believe in the mission of hospice and provide quality care to patients and families at the end of life – want strong oversight and quality control measures.
- The Visiting Nurse Association of Texas (VNA), a nonprofit organization founded in 1934, has a longstanding reputation for not only maintaining strict adherence to the regulations set by payer sources, primarily Medicare, but also for a culture of ethical behavior in all that we do. This is one of the most common reasons cited in surveys for why employees want to work at VNA.
- North Texas is one of the most competitive markets in the country, so VNA does see unethical behavior at times in the community, as multiple hospices are often meeting with the same families. VNA puts patients' and families' needs and the mission of hospice above profits, and we will not admit patients who do not meet hospice criteria.

2. **How difficult is it to survey hospices with the current growth?**

- VNA is CHAP certified, meaning we adhere to not only the state and federal guidelines, but we are accredited by CHAP (Community Health Accreditation Program), so we are required to adhere to the CHAP Standards of Excellence, a higher standard with more stringent requirements. CHAP surveys VNA every three years.
- We are seeing an increase in surveys from CMS (Medicare and Medicaid) due to the hospice industry growth and the bad players in the industry. That is likely to be the "new normal."
- **From NHPCO: "**We've recently noticed some alarming spikes in the number of newly Medicare certified `hospices – particularly in California, Texas, Nevada, and Arizona. 72% of all newly Medicare-certified hospices in 2021-2022 were in those states.
- "In response to this spike, the four national organizations representing hospices – NHPCO, Leading Age, the National Association for Home Care and Hospice (NAHC), and the National Partnership for Healthcare and Hospice Innovation (NPHI) – jointly reached out to Chiquita Brooks-LaSure, Administrator at the Centers for Medicare and Medicaid Services (**CMS)** requesting a meeting to discuss these hospice certification trends and request increased federal oversight."
    - **State-specific:**

Texas

- 2020: 69 new Medicare certified hospices
- 2021: 124 new Medicare certified hospices. 49 in Harris County
- 2022: 70 new Medicare certified hospices.

- **HOSPICE Act:**

- In 2020, NHPCO was actively involved in the development of the HOSPICE Act, (HR 5821), which was passed as part of the Consolidated Appropriations Act in December 2020. The HOSPICE Act identified several program-integrity measures for hospices, implemented in FY 2021 and FY 2022. NHPCO worked with Congress to increase oversight of hospice care – this shows how dedicated the hospice community is to ensuring high-quality care.
    - The legislation:
        a. Increased the frequency of Medicare certification surveys to be conducted every 36 months
        b. Provided an additional $10 million annually to CMS to improve the survey process and add enforcement remedies for poor performing hospices.
        c. Standardized training requirements for all surveyors, including surveyors at state survey agency and all accrediting organizations.
        d. Created a series of enforcement remedies, including civil monetary penalties, for hospices with condition-level deficiencies or serious substantiated complaints, effective October 1, 2022.
        e. Created a Hospice Special Focus Program for poor-performing hospices to provide additional technical assistance and sanctions. The program also requires the hospice to be surveyed every six months. Once they are found to be in compliance, the hospice can graduate from the special focus program. The Hospice Special Focus Program is in development and is expected to be included in proposed rulemaking in the spring of 2023.
        f. Increased the payment penalty for hospices not participating in the hospice quality reporting program at CMS from two to four percentage points, beginning in FY 2024.

3. **Are patients signed up for hospice who are not dying?**
    - The hospice benefit is designed for patients who are terminally ill with a prognosis of six months or less, if the disease runs its normal course. This requirement, along with all other regulatory requirements of hospice care, are carefully followed by all ethical hospice providers, including VNA. Our hospice physicians discuss every admission with the Registered Nurse at the bedside before an admission is completed.
    - Unfortunately, there are a small number of fraudulent actors who use their Medicare Certified Hospice Provider status to admit patients to service who do not need hospice care and may not be qualified to receive it. Any provider participating in these activities should be held accountable. Anyone who thinks they may have seen this kind of activity should report it by calling 1-800-HHS-TIPS (1-800-447-8477) or reporting online at https://tips.oig.hhs.gov.
    - In choosing a hospice, patients and families can look to CaringInfo.org for helpful guidelines on questions to ask. Referrals from friends and family are also helpful, as well as choosing a hospice with high-quality data on Care Compare through CMS.gov.

4. **Do hospices overmedicate patients?**
    - Pain management, symptom management, and comfort are at the heart of hospice care. A patient should never be overmedicated. Anyone who thinks they may have seen this kind of activity should report it, and any provider participating in these activities should be held accountable. VNA works with not only our hospice physicians, led by a medical director who is hospice and palliative care certified, but we also work with a specialty pharmacy to ensure that all of our orders are appropriate and only for the palliation of symptoms.
    - VNA's staff are well trained in the hospice philosophy as well as understanding and valuing the rights of the patient and family, and it is the patient and family who drive the plan of care, not the hospice.
    - There have been concerns through the years that hospices routinely stop all medications when someone is admitted to hospice and start all patients on "comfort meds." While

comfort medications, such as pain medications and anxiety or agitation medications, may be beneficial for many patients, there is not a standard that is true for all patients, as each case is different. The plan of care is uniquely tailored to meet the patients' needs and wishes. Many patients admit to hospice service and continue taking their medications as directed by their physician. The patient and family have the right to decide what they want to take or not take in terms of medications and other treatments.

5. **What can be done to prevent fraud or abuse, and to ensure patients get the care they deserve?**
    - **From NHPCO:** "Licensure, certification, and accreditation processes in place at the state and federal levels must be strengthened to closely monitor any indications of possible fraud.
    - Such monitoring could include:
        - A flag in the Medicare certification application process that identifies when more than one hospice is located at the same address, same ownership and/or same leadership team.
        - Close review of the number of Medicare-certified hospices in a given area. For instance, in 2021, there were 392 new Medicare-certified hospices in California alone. 279 of them were in Los Angeles County. That compares to just 79 in 2019.
        - Monitor growth in any state where there is an unusually high number of new Medicare-certified hospices, including Texas, Arizona, and Nevada. In Texas, there were 120 new Medicare-certified hospices in 2021 and an additional 35 added in the first six months of 2022.

6. **Why was the AseraCare case important?**
    - The AseraCare case set this important precedent: when two physicians reasonably exercise their clinical judgment and come to two different conclusions about a patient's six-month prognosis (and therefore hospice eligibility), neither physician would be wrong.
    - The AseraCare case focused on the role and responsibility of the physician in determining eligibility and confirming continued eligibility. CMS and Congress have supported the authority of physicians to determine hospice eligibility, and the AseraCare case confirmed: Clinical judgment should reside with physicians and should not be subject to second guessing by juries.

7. **How many nursing visits are appropriate?**
   Quote from article: "*Since most hospice care takes place at home and nurses aren't required to visit more than twice a month, it's not difficult to keep overhead low and to outsource the bulk of the labor to unpaid family members – assuming that willing family members are at hand."*
    - The statement that "nurses aren't required to visit more than twice a month" is untrue. This myth continues to be of grave concern to regulators and harms the industry. VNA opposes this myth and works with the patient and family to establish the plan of care, which includes visit frequency.
    - There is no regulatory requirement that dictates a certain frequency of visits. However, there is a regulatory requirement that requires the plan of care to be reviewed and revised no less frequently than every 15 days. So, it is accurate to say "the frequency of nursing visits is dictated by the hospice plan of care, based on the patient's needs and developed by the hospice as the patient is admitted. The plan of care is updated no less frequently than every 15 days."
    - VNA holds a higher standard when it comes to patient visits. We do the vast majority of our visits in person, and we will visit patients one to two times a week on average, but we make daily visits as well if a patient's condition requires this level of care. We also make routine visits on weekends as needed.

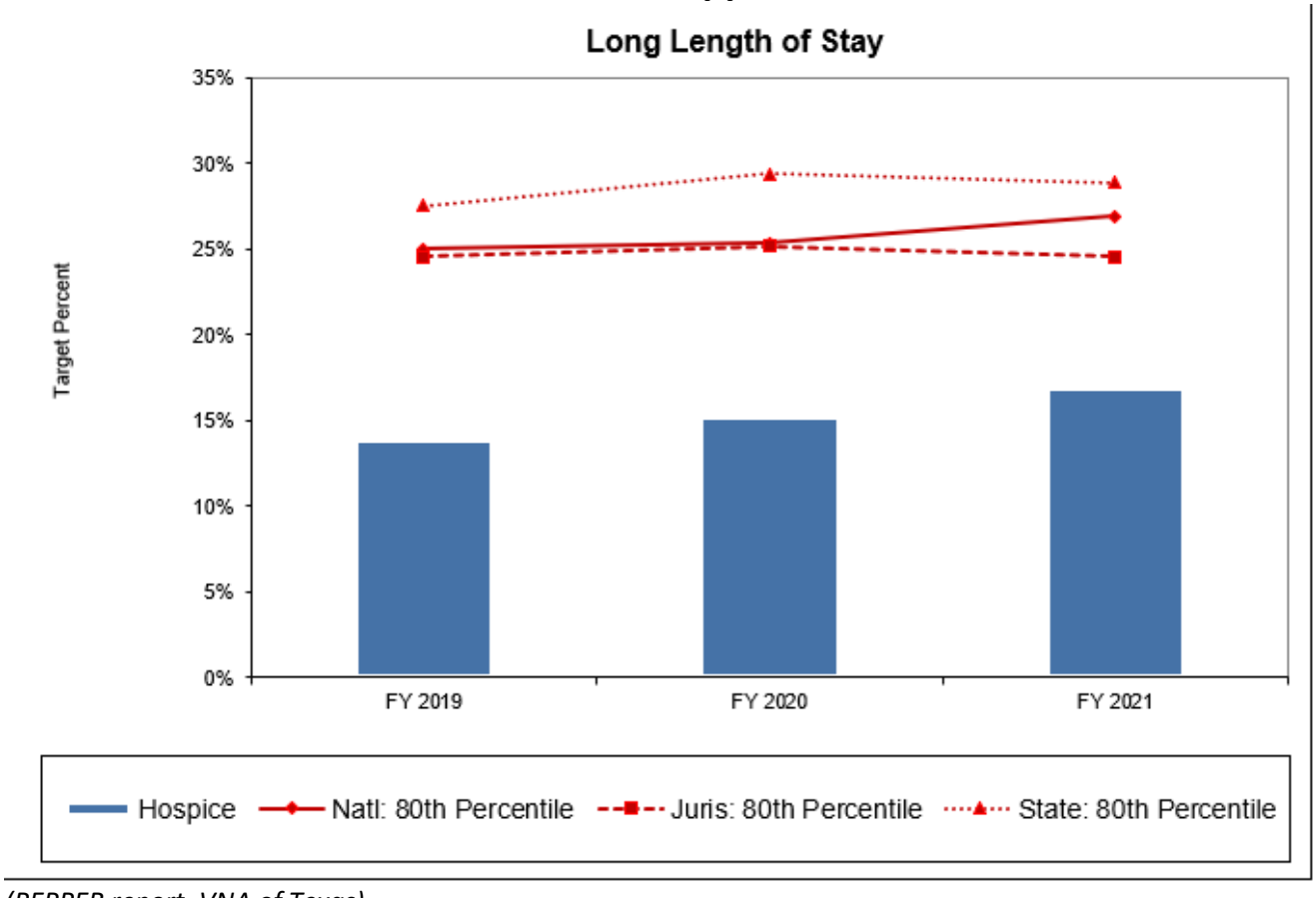
8. **How has hospice changed since it started? How does this affect VNA?**
    - **From NHPCO:** "When the Medicare hospice benefit was developed, the main focus of hospice care was patients dying of cancer. Today, patients with many other diagnoses also qualify for hospice care and receive care as their diseases progress. Some of the most prevalent

diagnoses – Alzheimer's and other dementias, Parkinson's, congestive heart failure (CHF) and chronic obstructive pulmonary disease (COPD) – have less predictable disease progressions.

- The article states, "We have patients in hospice with a wide variation in lengths of stay. Federal scrutiny puts pressure on hospices to discharge patients alive when their disease may have stabilized, causing the patient and their family to lose the support and care provided by the hospice. In many cases, they have limited options for care before then again becoming eligible for hospice. People shouldn't be punished for 'living too long.'" This is called discharging for extended prognosis. VNA has a lower rate of "long length of stay" patients than many other hospices. See Appendix A.
- We have many patients who come into hospice care in the final days of their lives. Nationally, 25% of hospice patients are on hospice care for five days or less, and 50% of patients are receiving hospice services for 18 days or less. Only 10% are enrolled for more than 266 days.
- From an advocacy perspective, what hospice and palliative care providers want is a system reengineered to meet patients and families where they are in their serious illness, and to provide the level of care they need at that time.
- **From NHPCO:** "Over and over, we hear from families whose loved one was on hospice care for a few days that they wish they had been given the option earlier – their loved one received acute care for far too long, it was painful and intrusive, and once they got on hospice care they finally received the comfort they needed. It doesn't have to be this way. We can decide as a country to provide the right level of serious care at the right time. Everyone with serious illness deserves to have care tailored to their goals. They deserve control over their own care, and access to palliative care, if they want it. Their healthcare providers should know about hospice care and share that information before it becomes the only choice. Knowledge is power, and patients should be empowered to make their own choices."

9. **Given what we've seen about fraud and abuse, and a complete lack of patient care by some hospice providers, should patients/families even trust hospice?**
    - Yes. Every day, nonprofit and for-profit hospices across the country provide patient-centered, goal-oriented, interdisciplinary care with love and compassion, to support patients and families at the end of life. Every year, more Americans choose hospice care, and their families report high levels of satisfaction with that care.
    - Unfortunately, some bad actors have used opportunities to take advantage of the system. This is true all over the country, and North Texas is no exception. We see this in our community, but at the same time, most hospices want to do the right thing and provide quality care to patients. VNA has a high standard of care and strives to put the patient's needs above all else.
    - While VNA takes Medicare, Medicaid, and many private insurance plans, we also admit patients with no ability to pay, ensuring that we meet the needs of the community and do not put profits above our mission.

Appendix A



(PEPPER report, VNA of Texas)

**VNA is well below the state, jurisdictional and national 80th percentiles for long length of stay patients.*

Table 3B. Hospice Care Index-Hospice Score for Each of the 10 Indicators that Comprise the HCI Observed Score

#	Name (Hospice Score Units)	Numerator	Denominator	Hospice Observed Score(N/D)	National Average*	State Average*	Percentile Rank Among Hospices Nationally	Index Point Criteria	Meet the Indicator's Criteria?	Provider Points Earned (Yes=1; N=0)
1	CHC/GIP Provided (% days)	1,449	176,563	0.8%	0.9%	N/A	79	Hospice Score Above 0%	Yes	+1
2	Gaps in nursing visits (% elections)	486	917	53.0%	44.5%	N/A	62	Below 90 Percentile Rank	Yes	+1
3	Early live discharges (% live discharges)	24	317	7.6%	7.5%	N/A	57	Below 90 Percentile Rank	Yes	+1
4	Late live discharges (% live discharges)	108	317	34.1%	37.7%	N/A	41	Below 90 Percentile Rank	Yes	+1
5	Burdensome transitions, Type 1 (% live discharges)	14	317	4.4%	3.6%	N/A	67	Below 90 Percentile Rank	Yes	+1
6	Burdensome transitions, Type 2 (% live discharges)	4	317	1.3%	1.2%	N/A	69	Below 90 Percentile Rank	Yes	+1
7	Per-beneficiary spending (U.S. dollars $)	$29,867,676	2,208	$13,527	$14,818	N/A	45	Below 90 Percentile Rank	Yes	+1
8	Nurse care minutes per routine home care days (minutes)	3,150,585	174,612	18.0	15.7	N/A	80	Above 10 Percentile Rank	Yes	+1

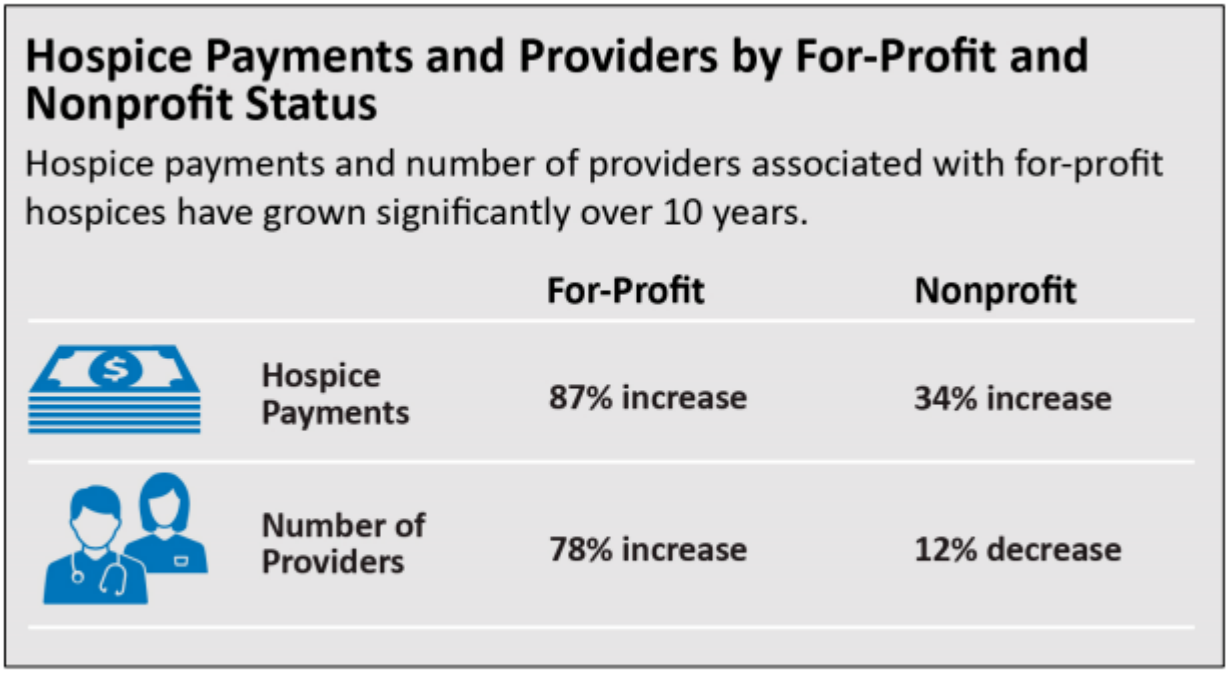
9	Skilled nursing minutes on weekends (% minutes)	163,890	3,150,585	5.2%	9.1%	N/A	16	Above 10 Percentile Rank	Yes	+1
10	Visits near death (% decedents)	1,622	1,666	97.4%	91.3%	N/A	82	Above 10 Percentile Rank	Yes	+1
	Hospice Care Index Total Observed Score (out of 10)									**10**

**The National and State Averages are calculated as the average Hospice Observed Score for all hospices, in the nation and state, respectively.*

(CASPER report, VNA of Texas)

**VNA has received the highest score possible on the Hospice Care Index, which is publicly reported.*

Figure 9: Payments and Number of Providers Associated With For-Profit Hospices Relative to Nonprofit Hospices Increased Over 10 Years



[21] For 86 hospices (less than 1 percent of the total number of hospices), we could not categorize the hospices as for-profit or nonprofit because of a lack of information.

(https://oig.hhs.gov/oas/reports/region9/92003015.pdf)

References

https://oig.hhs.gov/oas/reports/region9/92003015.pdf

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