TRANSCRIPT: The Hospice Moratorium: What CMS Is Really Signaling About the Future | Part One

Leadership Focus And Show Setup

Melody King 0:00
Everything rises and falls on leadership. The ability to lead well is fueled by living your cause and purpose. This podcast will equip you with the tools to do just that. Live and lead with cause and purpose. And now, author of the book The Anatomy of Leadership, and our host, Chris Comeaux.

Chris Comeaux 0:22
Hello and welcome. I'm so excited today. This is my favorite time of the month when my good friend Cordt Kassner joins. Cordt, welcome.

Cordt Kassner 0:30
Thanks. It's great to be back.

Chris Comeaux 0:32
Yeah, we missed you for a month. I know you were working hard traveling, and so I had to carry the weight of top news stories of the month without you. You know, that that burden was really heavy. Thank you for having me. Appreciate you. Yeah, you bet. Well, to our listeners, and so Cord and I've done something different this month or this year. And so, top of the quarter, he and I just review the top news stories of the quarter. But the rest of the year, we've really been using Dr. Byock's framework just to remind you what that is. Dr. Ira Byock, in many respects, one of the just patriarchs of this amazing work that we do in hospice and powdered care. And so his framework is zero tolerance for waste, fraud, and abuse, clinical and programmatic standards, making meaningful data readily available, driving competition based upon quality. And so that leads us to our guest today. So what we've been trying to do throughout the year is kind of bring amazing guests that are themed along that framework. And I'd say this show is around zero tolerance for waste, fraud, and abuse and driving competition based upon quality. So with that, we have Dr. Jennifer Kennedy with us. Jennifer, welcome. Hi, Jennifer.

Dr. Jennifer Kennedy 1:33
Hey, thanks for having me on. It's really great to be with you.

Chris Comeaux 1:36
Yeah, I know a lot of folks, a lot of our listeners already know who you are, but let me introduce you. So Dr. Jennifer Kennedy is the vice president for quality standards and compliance at CHAP. She's a nationally recognized hospice expert. She has extensive experience as a leader and a nurse in diverse healthcare settings. She's even worked in hospice empowered care for the last 35 plus years. She is a certified healthcare compliance professional. She has a doctoral degree in health, education, and policy. And she is led for the CHAP quality and compliance team and interacts with CMS, their contractors, individual states related to regulatory and quality matters for home-based care. Jennifer was honored by the UK St. Christopher's Hospice as a nursing pioneer for their 2020 Palliative Care Nursing Project. And she is a Board of Directors member of the Hospice and Palliative Care Network of Maryland. She speaks at national and state events. She's a published author, develops specialty education, and teaches graduate health care administration courses at the university level. So again, Kim, it's so great to have you.

Dr. Jennifer Kennedy 2:36
Thanks. I love to uh talk about regulatory stuff, you know that. So uh happy to be here and uh talk about whatever we want to talk about today.

Chris Comeaux 2:47
Well, we're gonna talk about a big thing that's on people's mind, which is the moratorium. But before we get to that, we kind of have a tradition of our podcast, which is to ask our guests, what's your superpower?

Dr. Jennifer Kennedy 2:56
What's my superpower? Well, I'll tell you, I I do have a t-shirt that says, I'm a nurse. What's your superpower? So um I'm celebrating my 40th year as a nurse this year. So I'm gonna say that's my superpower.

Chris Comeaux 3:10
You know, it's so cool. It's so funny you even say that. Every time a guest says they're superpower, it just feels so profound. Just talking yesterday, sometimes when I sit in a lot of like the big rooms with the C-suite leaders, especially the CEOs, it's less and less that those that have been by the bedside are in that role. And I'm telling them myself, because I'm actually the business guy, grew up more on the finance side of the house. I do think that's a superpower because that perspective is so needed right now, especially as we navigate the future with these just regulations and stuff. So thank you for the work that you're doing. Love the team there at CHAP. We're great collaborators. Well, can we go ahead and jump in and the big kind of topic

What The Hospice Moratorium Is

Chris Comeaux 3:49
at hand? Gosh, a lot of people have asked me this question. So we're gonna take this kind of key theme of the moratorium and kind of twist it and turn it in a lot of different ways. But there may be some listeners who have not followed every development. Can you explain what the hospice moratorium is, why CMS implemented it, and where things stand as of today?

Dr. Jennifer Kennedy 4:06
Absolutely. So um CMS did uh place a moratorium um back in May uh for six months, and it's for new enrollees. So uh what they're doing is putting a stopgap at the enrollment, the entry point of hospice providers into the Medicare system. And they actually um put the same moratorium on home health at the same time. So I, I think this is unprecedented. We have home health, hospice, and DME, all three have moratoriums currently as we speak, which I am not remembering happening at any time in the past. But uh what this means is that we can have no new entry or any kind of um uh change of ownership uh or uh uh uh developing a new location uh at the hospice level for at least six months. And that actually ends on November 13th, Friday the 13th is when our day is when our day uh is uh up for the six months. So um if you are a current hospice provider, you're business as usual, um, and you're doing hopefully the good work that the benefit is designed to help you to do. But um, if you're thinking about uh wanting to enter the system, you're not gonna be able to do that until the moratorium is lifted. Now, um, providers that uh had their 855A in the pipeline um at the time the moratorium was announced, um, they can go ahead with their um survey uh to uh gain their um CCN. So uh if they didn't have um a viable 855 in the pipeline, then they have to wait. They have to wait until the moratorium is lifted.

Fraud And Market Expansion Pressures

Cordt Kassner 6:00
So, Jennifer, you you commented that this moratorium is hitting, impacting hospice, home health, and DME. Can you set the stage and provide a little context? Why is this impacting hospice home health and DME?

Dr. Jennifer Kennedy 6:14
Yeah, thanks, Cordt. Um basically CMS, well, I I don't think it's any surprise that um CMS has been really focusing on fraud and abuse for the last few years. And we've seen,

particularly in hospice, um a lot of media attention around fraud and abuse that has been happening, particularly in um targeted states um out west. But it is the fraud and abuse that is driving um these moratoriums. And see if you if you're a rule reader like I am, and you look at all of the discussion in the rules that have come out in the last couple of years, they're actually citing case by case by case the different instances of fraud and abuse, not only in DME, but also in home health and hospice. So um it is it it is an unprecedented time where uh we actually um have this um huge focus on fraud and abuse. And I, you know, it really um kind of breaks my heart that we're seeing this in hospice, you know, given the amount of years that I've been in this space, uh, that this would be happening um to people who are at end of life. My God, you know, um whether it is intentional or unintentional, it it doesn't do any of the patients who are seeking that kind of service any good. And uh leaves a terrible impression on um the the community at large, the you know, the user community at large, um, for the good hospices. They have to double time now to show what kind of quality hospice they are.

Chris Comeaux 7:53

Well, that's well said, Jennifer. You know, um I did a podcast with Kim Brandt, the chief operating officer at CMS. And I can't remember if it was she or I that brought up this analogy, but right when we were taping the show, this guy in the NBA was actually, I think, convicted or penalized or something because he was throwing games and betting against his team. Just think of how perverse that is. And then we drew the analogy. Think of like, you know, world-class athletes like Steph Curry, Curry is one of my favorites growing up, Michael Jordan, now LeBron James, and they're not playing the same game. And we kind of drew that analogy, like the hospices that I love and familiar with, what they're working at is trying to be world-class programs. And then you end up with these uh fraud, I the term is fraudsters. I have a great leader in our network said, you know what? We need to quit calling them fraudsters. That sounds like a toddler who's done something wrong. They are crooks. Like, you know what? That's actually calling it out. I actually really respect that. And so it is sad because we work so hard because hospice is tough enough for people to understand because we're kind of a death adverse society. We've worked so hard these many of years, and then you get these bad apples, bad players. One of the talking points, I believe, was in that podcast where Kim said there are more hospices than there are Starbucks in Los Angeles. It's just absolutely just ridiculous. Well, well, let me ask you the question that's on everybody's mind, Jennifer. So, do you believe the moratorium is going to be extended? If so, how long? And what are the factors that are really gonna drive ultimately that decision?

Dr. Jennifer Kennedy 9:30

Um, I hate to say it, but my gut tells me it will be extended another six months. And um I have heard that CMS will give notice, a 60-day notice, if they are going to extend it. So

that would be somewhere in September. We're getting close, right? Um, for that any kind of notice coming out um that they would extend it. I think it will be extended because I don't know that six months is enough time for CMS to do what they need to do to make an impact on the fraud and abuse that is happening. Yeah, they're doing plenty. And you follow um their their notices that come out, you know, we shut this many uh providers down, we stopped um this much payment, we recovered this much money. But I don't, you know, I don't know if if it's enough yet to justify not extending it six months.

Chris Comeaux 10:24
Yeah, that makes total sense. Because what you're saying is, and we've seen some of the first part, which is they got to go root out the stuff that's just so blatant. And we've seen some of that. Cordt's Hospice and Palliative Care Today. It almost feels like Cordt on almost like a weekly basis. But then they some of the stuff that might be a little bit more in that gray area they have to investigate. And then I imagine, right, they're also gonna go through some of the 855s with more of a fine-toothed comb to where they feel like, okay, now we have kind of a cleaner slate to move forward. That is that kind of the ballpark of all the work that needs to be.

Dr. Jennifer Kennedy 10:57
I think so. I think they're fine-tuning um the recent enrollment provisions that have gone into place. You know, um, obviously there's um, you know, there's a lot of regulatory nuts and bolts and widgets that have to happen in order for that um to work cleanly and accurately. Um, also, I uh uh I saw Kim Brandt talk about a year and change ago, and um she said that um CMS is actually working with um AI tools to help um with some of that enrollment screening. I don't know if she mentioned that when you had her on there. Yeah, so I mean I think they're getting those kinds of things into place. And then, you know, the the fraud um in some of at least the California hospices really goes um pretty deep. I mean, there's you know, there's um complicated money trails to follow and um all of those things. So I , I think all of those are in play right now. And and it might be even kind of like an onion where CMS is peeling it back and they're finding more and more as they peel um each layer back.

Chris Comeaux 12:07
Yeah, that's very well said. Yeah, we actually have the I pursued the AI question. She mentioned a chili cook-off, and I'm like, what? The chili cook-off. It was a chili cook, it was a the chili cook-off of technology vendors to be able to have the best of the best and how rapidly they were cycling to get to the best of the best, to then to deploy those tools, which was which was super impressive.

Cordt Kassner 12:28

Yeah, Chris, you know, you mentioned the the sports analogy, and and one of my favorite quotes that keeps coming to mind during during this conversation, it comes out of game theory, which is the game we're watching is not the game that's being played. And you know, it just seems like there's this, you know, there's this surface facade of of, you know, oh, we're gonna look at waste, fraud, and abuse, but behind the scenes, it's much, much deeper than that. And uh I I agree with you, Jennifer. It breaks my heart that that this is something that has infiltrated the hospice community. Uh it's just it's so opposite and antithetical to the hospice philosophy of care that it just is horrible. So uh Jennifer, a follow-up question. You mentioned that really the moratorium, the primary driver for that was waste, fraud, and abuse. But do you have a sense that was there anything more beyond that? Was there rapid market expansion, poor quality, maybe something else entirely that that may have been driving the moratorium uh and not just it happening, but it happening now versus a year ago or a year from now?

Private Equity And Accreditation Red Flags

Cordt Kassner 13:43

And then a quick follow-up with that. What's CHAP doing? And and you and I uh share, you know, conflict of interest. Like I used to be on the CHAP board and uh really affiliated with the great work that CHAP is doing. What's CHAP doing to explore this and address fraud?

Dr. Jennifer Kennedy 13:59

Okay, so question one. Um yeah, I definitely think the the market expansion is an issue. And and LA County is just an attestament to that, right? I don't know what like 600 hospices in LA County alone. Obviously, you know, there's some kind of um uh cycle happening where, you know, maybe it's um private equity backing. Um we know that there's the get the hospice up, get the license, get the CCN, and then flip it, you know. Um so yeah, I, I think it's it it it isn't about opening a hospice to take care of dying people at the best quality of care. It's it's it's a business, it's a transaction um situation. So I think a lot of that I I have to remember back to 2014, I, I remember I had a uh a subscription to um uh the New York Times, and they said the Wall Street Journal uh put in uh a notice that hospice is a good investment. And then I think from then on, we were off to the races where you know it became something that investors wanted to um uh dip their toe in and it just expanded, expanded, expanded. And now here we are today. So I it it is it is quite unfortunate that it this has become a transaction where at the most critical time in someone's life um they're uh if they're going with a hospice that is only transactional, they're not getting that hospice experience that they were wanting, needing, expecting. And it's again, you know, it it is uh beyond comprehension that this would be happening

at this particular time. But what is CHAP doing? So CHAP, um, we've always walked the high road uh of compliance. And we've uh in the last couple of years, we've put in um a lot of uh uh processes that right up front, when we get applications, we're doing increased due diligence to make sure that we're not taking on one of these uh potential transactional organizations, whether it be hospice or home health or what have you. So we're doing extra checks. And if if the alarm bells are going off, we're not taking them. We will not take them because we don't want to contribute to the problem. We want to partner with CMS and um everybody out in the hospice space to make things better and get these folks out of the out of the community.

Cordt Kassner 16:39

You know, a follow-up to that, it's just a question that I've had. I, I think initially when we look at the the expansion and the you know, the hundreds, the thousands of hospices opening and being licensed in Los Angeles County and Southern California in general. The the first place I look are, you know, well, we need to take a look at those people, those providers. You know, what are they doing? And you know, when you have a uh a CEO or a chief medical officer who's over 80 hospices, I mean that kind of stuff. It it looks funny, it smells funny, it needs to be explored further. But I think there's an uphill side of that too, which is I didn't the California Department of Health realize that they were going from 20 hospice applications in LA to 200 overnight? Like, was somebody asleep at the switch? And you know, and it it makes me wonder about the license side at the state level, but in California, you you have to be accredited in order to get a Medicare certification. And they've had that regulation in place in California for a while now, and for their role in what's happening.

Dr. Jennifer Kennedy 18:07

So uh yeah, I think there was uh there was two stopgap failures, right? Um one that the you know, maybe the expansion was so rapid that the state of California couldn't even recognize what was happening or keep up. I can't really speak to, you know, what happened there and why we had so many licenses issue. But to the accreditation point, yes, uh organizations have to be accredited, but it's the accreditor like CHAP or Joint Commission or ACHC that decide if they're going to go ahead and do that. Now, you know, I don't what do we have? Something like 14 or 18 hospices at Friar Street at that one address. And uh, you know, it's a decision whether you know that there are 18 and you're gonna accredit 12 of them. To me, that smells funny. It looks funny, it's a big red flag. CHAP didn't accredit any of them at Friar Street because we didn't like the smell of it right from the get-go. So yeah, I think um it it isn't just a state problem, but it is also um an accreditation problem. And we had a final rule come out from CMF in June of 26 that is an AO oversight rule where uh AOs are gonna jump through um additional hoops um

because of oversight uh uh focus. And I do believe that is a attached cord to um some of this fraud and abuse that has been happening.

Cordt Kassner 19:45
Well, I certainly certainly applaud your position on this, CHAP's position on this. Um because again, you know, the the game we're watching is not the game that's being played. There's a lot of money behind accreditation surveys and state licensure, and you know, we can't miss the dollar signs that are attached to this market expansion that's occurred. Like somebody's making a lot of money on this. And and of course, that's part of CMS's focus.

Chris Comeaux 20:14
You know, Cordt, the thing that kind of occurs to me listening to you. You know, what makes hospice people incredible is they, by nature, to do a great job, are systemic thinkers. Um, I have a perfect example. There was a season where actually we managed the home health, and I'm not disparaging home health nurses, they do amazing work, but I went out and shattered a home health nurse. I'm an accountant by trade. And because the whole home health model was so kind of monocular in its focus, like very just very goal focused, she was focused on the rehab. Well, the patient had just gone visit the oncologist, just had a visit to the ER, but that home health nurse was focused on what the actual goal was for the therapy. And I'm got, as a hospice person, going, shouldn't we ask about that oncology visit and the ER visit? Here's my point that we're naturally systemic thinkers, but I we do do some consulting with folks outside of the hospice realm. A lot of the world is much more kind of like one-sided. Like it's so obvious to us looking at a lot of this stuff that uh, like for instance, I have a friend of mine earlier day said that, you know, when you think about a career, the two certain things in life are death and taxes. That's what Wall Street was calling out. Like, hey, here's a business opportunity. Everyone is gonna go through death. But unfortunately, they just created all this ick, which so let me kind of with that kind of flip it, because there is a systemic impact to

Access Risks And Protecting Good Providers

Chris Comeaux 21:33
this. Every policy always creates unintended and also intended consequences. So the moratorium is to discourage bad actors, but could it also limit access to hospice care in growing communities, discourage high quality organizations from expanding, Jennifer?

Dr. Jennifer Kennedy 21:50

I do believe um when when you have a broad brush approach, um you have the the offenders get caught, but also the non-offenders get caught with that kind of an approach. So yeah, I do believe there will be legit hospices, good hospices that could be negatively impacted by this moratorium. So you know, and it and you have to kind of look back to things like the special focus program where we had uh, you know, actually good providers providing good care got caught up in that. So again, it's that broad brush, I think, um, that always will um have that impact um of capturing the people you want to capture and also dragging along people that are just doing a good job and taking uh good care of people at end of life.

Chris Comeaux 22:44

Do you know of any exceptions? Because we've actually seen some of that unintended consequence, maybe a lack of systemic thinking. I'm not faulting the government. It's hard when you're dealing with the these kind of multifactorial complex systems not to have unintended consequences. But have you seen the government even having the bandwidth to address some of those one-offs of going, oh, this is pretty obvious the exception to the rule we didn't intend you guys or they have not even gotten to that sort of stuff.

Dr. Jennifer Kennedy 23:09

I've not heard of anything personally, you know, maybe Cordt you have um in in your travels, but um I, I have talked to people who had planned to um expand their current hospice out into rural areas where there is very little access um for these types of services and now they're on a halt. They can't do that. So I, I can speak to that but um I would uh offer to court if you've heard of anything specifically you know I've not heard of anything specifically around that and in the way that I'm hearing your your question and comment Chris is you know do we have a patient rep?

Cordt Kassner 23:52

You know do we have a a hospice rep at CMS to pose the question well what if this provider's actually okay? Like is there anybody even asking the question? We're so laser focused on identifying waste fraud and abuse but but like everybody conceptually talks about good providers getting caught in the net and we know that that happens and and from a Hospice and Palliative Care Today newsletter perspective we see those stories where good providers are getting caught in this net and it it it brings questions from a waste fraud and abuse moratorium it brings up questions around the extrapolation method like is that actually legitimate and like I like math the math part of me actually can get on board with some extrapolation which which I know is not a the popular position but math kind of suggests that it you know if you have a randomized sample that that you know like the numbers are solid they it it holds but we don't always see any

comparison to to actually take a look and say well if if if we reviewed 50 patients patient charts and five of them were bad we're therefore going to take 10% of all of your reimbursement back. Well I would like to see the follow through that says we're gonna go look at all of that hospice's patients and actually determine were 10% problematic or not. Because my guess is for for our good players out there that it's not 10% our are problematic. But I, I don't think I've ever seen the the follow through research to say let's take a look at that and and perhaps there's there's an opportunity for AI for for some other methods to come in and and explore that but but to your point Jennifer I, I don't really hear about um somebody really advocating for the good hospice providers that might have gotten caught I tend to hear more well that's the cost of doing business and just get ready.

Chris Comeaux 26:13

So maybe this is a great aha well said Cordt because I'm sitting there processing like my early days I was an auditor in the public accounting realm and thinking about how those processes actually worked and we always that was actually the managing partner's job was to kind of see the weird exceptions and call it out. So I think we just struck upon an interesting idea maybe we all can carry this into the different uh conferences we might be I think many of us are going to be at conferences we're kind of going into that fall season that um like why wouldn't they actually anticipate that? Because Cordt you just named it there's no perfect mathematical formula. Remember one of the stories I read about whenever uh Peter Thiel, Elon Musk were at PayPal, they knew that, and this is the early days of AI, they knew that AI would cover 80% of the transactions, the Preto principle, but 20% is what you actually reserve the humans for the exceptions to the rule. So I wonder if we could kind of pay forward that principle to CMS because they're getting good and say that's what you reserve some type of like hotline call this person so that way you don't penalize the people that are getting caught up in that net. So that way they're still doing the wonderful work they're doing from fraud, but then they actually have that kind of safety net of sorts of going, you know what, there's no perfect mathematical principle that these people by the exception maybe we could actually you know suggest something like that.

Cordt Kassner 27:29

You know, it's really an interesting idea. It's flagging in my mind earlier this week I was at the Kentucky State Hospice Conference and there was discussion about how difficult it has been to remove a Medicare beneficiary who's uh elected the hospice benefit, but they didn't right somebody fraudulently put on hospice and how difficult, nearly impossible it was to streamline the process to remove that person from the hospice benefit so that their primary care doc could be reimbursed for tests or whatever. And my point being they have streamlined that process there is a contact person now to to reach out to and

streamline that process that if you think you're on hospice inappropriately, like that can get resolved in a fraction of the time wouldn't it be interesting if there was a contact person for a legitimate hospice doing great work to be able to elevate their concerns that they were inappropriately caught in a fraud net. That's fascinating.

Chris Comeaux 28:44
We've got an army of listeners and so and many of us are all going to beat these conferences so a cacophony of people kind of suggesting that maybe we'll actually

The Future Of Hospice Oversight

Chris Comeaux 28:52
get that done.

Cordt Kassner 28:52
Well both of you are are are Jennifer you've spent your much of your career interpreting CMS actions beyond the moratorium itself as Chris was talking about kind of a bigger frame of reference what broader message do you think CMS is sending about the future of hospice oversight?

Dr. Jennifer Kennedy 29:12
Oh definitely that it will continue to be there, that it will increase and tighten um as as long as we have these um I, I believe the term I, I keep hearing is the bad actors in in the space. And you know you're always going to have a percentage of them but we have a high percentage right now. So I think this is a lesson for us to understand from CMS that they're not going to tolerate any kind of um fraud and abuse um in any provider type um particularly hospices. So even with them the moratorium ending it doesn't mean that oversight will end. It doesn't mean that program integrity activity will end. It's gonna be hospice in a different kind of world than we're used to um dealing with in the past. And if you've been around the block, you know, for a long time you've seen the changes over the decades and you're going, oh wow, this is really crazy and now oh wow this is really crazy. But um when do we get to the end of crazy? I don't know. I, I really think that um it it is uh it is compliance and quality that rules the day and that's where CMS is going to live um after the moratorium end.

Jeff Haffner 30:41
Don't miss part two of this episode coming this Friday.