

Eli's Hospice Insider

Compliance: Surveyor Conflict Of Interest Change Pleases Hospices

General conflict of interest declaration will cover many possible scenarios.

One of the more popular provisions in the hospice survey revamp regulation is the one prohibiting surveyors from surveying a hospice if they have certain conflicts of interest. And the final rule has improved on the proposal.

In the 2022 home health proposed rule last July, the Centers for Medicare & Medicaid Services included a new list of such conflicts of interest. They included "that a surveyor would be prohibited from surveying a hospice program if the surveyor currently serves, or within the previous 2 years has served, on the staff of or as a consultant to the hospice program undergoing the survey" and having a financial interest in the hospice, according to the rule. The same would go for an immediate family member's financial interest, CMS proposed.

"It is essential to prohibit conflicts of interest to maintain the integrity of the accreditation process," said The Joint Commission's **Margaret VanAmringe** in the AO's comment letter. The Joint Commission "has a robust policy in place to prevent real or perceived conflicts of interest. This policy includes surveyor affiliation with an organization via personal business relationships or immediate family members," she added.

Many other commenters agreed. But hospices and their reps had a few more items they wanted CMS to add to the conflict-of-interest list.



"CMS should consider a 2-year ban on staff from competitor hospices (based on geography) surveying one another," suggested LeadingAge's **Mollie Gurian** in the trade group's comment letter. Multiple commenters echoed this suggestion.

The same should go for surveyors with financial interests in a competitor, UnityPoint at Home proposed in its comment letter.

And what about "circumstances under which a surveyor may have applied for a position at a hospice it may now be surveying," the National Coalition for Hospice and Palliative Care asked in its comment letter.

That prohibition could probably just cover "key management positions" and "similar positions at other hospice providers in the same service area," offered the National Partnership for Healthcare and Hospice Innovation in its comment letter.

Another one: "Consider prohibiting surveyors from surveying a hospice who ever had a family experience with that hospice - whether good or bad," Gurian suggested.

"CMS should develop a surveyor Code of Ethics or Attestation relative to conflicts of interest to convey that surveyors are responsible for maintaining objectivity throughout the survey process," the Coalition told CMS. That would cover conflicts not specifically enumerated. "An attestation or agreement to a Code of Ethics should be addressed in the CMS Surveyor Hospice Training Modules and could be signed by the surveyor during the training process," the Coalition said.

"While the surveyor exclusion criteria CMS proposes is a good start towards meeting the goal of avoiding potential conflicts of interest, we believe additional processes are necessary to protect hospices more fully from surveyor bias," said the National Hospice and Palliative Care Organization's **Edo Banach** in the trade group's comment letter. That would include "a more global solution ... where there is a process in place for a surveyor to declare a conflict of interest, there is guidance for SAs and AOs on addressing conflicts of interest, and training on conflict of interest is added to the CMS Surveyor Training Modules," he says.

CMS seems to have listened, at least on the declaration front.

In the final rule published in the Nov. 9 Federal Register, CMS says "we are revising § 488.1115 to add a requirement that surveyors must disclose actual or perceived conflicts of interest prior to participating in a hospice program survey and be provided the opportunity to recuse themselves as necessary," according to the regulation.

"We were very pleased to see this language in the final rule," NHPCO's **Judi Lund Person** tells AAPC.