

Eli's Hospice Insider

Enforcement: Survey Final Rule Narrows Payment Suspension Authority

CMS pulls back on plan to apply punishing suspensions to all patients.

One new survey enforcement remedy will be a little more reasonable, thanks to a change in the 2022 home health final rule containing a raft of sweeping hospice survey changes.

Implementing enforcement remedies, formerly known as alternative sanctions, is one of the most impactful changes in the hospice survey changes. And of the remedies, suspension of Medicare payments have hospices and their representatives most concerned, according to their comment letters on the proposed rule.

Payment suspension will "be a very dramatic remedy in the hospice program," LeadingAge's **Mollie Gurian** warned in the trade group's comment letter on the proposed rule. "Hospice receives more of its revenue from Medicare than other settings so payment suspension, even for new patients, will have a dramatic impact on finances."

The National Hospice and Palliative Care Organization "is very concerned about CMS' proposed language regarding the potential suspension of all payments," NHPCO's **Edo Banach** emphasized in its comment letter.



"Hospice providers have a higher volume of new admissions annually than most other post-acute care providers," pointed out the National Association for Home Care & Hospice in its comment letter. "Smaller, independently owned hospice providers may be disproportionately burdened financially by imposition of payment suspensions as well as other remedies as compared with larger hospice providers or hospice providers that are part of a larger healthcare network. This could result in less choice for the hospice consumer as smaller providers are increasingly pushed out of the hospice marketplace," NAHC cautioned.

"In states like New York with hospice Certificate of Need (CON) requirements, suspending all payments to ... a hospice could result in the only hospice in a region of the state closing due to financial constraints instead of working towards performance improvement and the delivery of quality hospice care," **Patrick Conole** with the Home Care Association of New York State Inc. offered in the group's comment letter.

"The same could occur in non-CON states, especially in rural areas and inner-city areas," NAHC told the Centers for Medicare & Medicaid Services.

HCANYS "encourage[d] CMS to use the suspension of all or part of payments remedy sparingly and only to new admissions and only in the case of immediate jeopardy," according to its letter. Many other commenters made the same requests.

Allowing payment suspensions for all patients, rather than only new admissions, and for non-IJ situations "is not consistent with the remedies that are in effect for home health agencies and nursing homes," noted the National Coalition for Hospice and Palliative Care in its comment letter.

Once again, hospices' comments seemed to get a good reception at CMS, according to the final rule published in the Nov. 9 Federal Register.

In the final rule, CMS agreed "to limit the suspension of payment to all new patient admissions, rather than suspension of all or part of the payments to which a hospice program would otherwise be entitled," it noted in a fact sheet on the rule.

