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Eli's Hospice Insider

Regulations: Enforcement Remedies Set To Give Hospices' Surveys Higher Stakes - Including Possible Closure

CMPs, payment suspensions most punishing of surveyors' new tools.

Get ready to pay up to $10K per day, or lose Medicare payments altogether, if your next survey isn't perfect. That's what could happen under the hospice survey changes Medicare proposed in the home health rule, which are likely to be finalized nearly as-is.

Reminder: The Consolidated Appropriations Act enacted last December requires implementation of a number of "enforcement remedies," formerly known as alternative sanctions, when hospices have survey deficiencies. The proposal to add those showed up in the home health rule the Centers for Medicare & Medicaid Services published in the July 7 Federal Register.

"These additional enforcement remedies may be used to encourage poor-performing hospice programs to come into substantial compliance with CMS requirements before CMS is forced to terminate the hospice program's provider agreement," the rule explains. "CMS would be able to impose one or more remedies for each discrete condition-level deficiency constituting noncompliance."

Here are the five "enforcement remedies" that the Centers for Medicare & Medicaid Services has proposed:

1. Civil money penalties. The CAA law requires CMPs specifically, and sets an October 2021 deadline for them. That deadline won't be met due to the HH final rule's projected publication date, but may be rescheduled for Jan. 1, industry observers speculate.

CMS proposes setting CMP amounts at $500 to $4,500 per day for "lower range" levels, $1,500 to $8,500 per day for "middle range" levels, and $8,500 to $10,000 per day for "upper range" levels - generally just Immediate Jeopardy situations. CMS also proposes per instance penalties of $1,000 to $10,000, also not to exceed $10,000 per day.

CMS suggests six factors it would use to determine which enforcement remedy to apply and at what level (see box, this page). Surveyors would also take a providers' size and quality assurance/performance improvement programs into consideration, according to the rule.

2. Payment suspension. The CAA also requires Medicare payment suspensions as an enforcement remedy, but with an October 2022 start date.

"If a hospice program has a condition-level deficiency or deficiencies ... we may suspend payments for all or part of the payments to which a hospice program would otherwise be entitled for items and services furnished by a hospice program on or after the effective date of the enforcement remedy," CMS says in the rule.

3. Temporary management. Temporary management is the last of the specified enforcement actions in the CAA. It "means the temporary appointment by CMS or a CMS authorized agent, of a substitute manager or administrator, who would be under the direction of the hospice program's governing body and who would have authority to hire, terminate or reassign staff, obligate hospice program funds, alter hospice program procedures, and manage the hospice program to correct deficiencies identified in the hospice program's operation," the rule explains. The law sets an October 2021

start date for the remedy.

4. Directed plan of correction. The directed POC is not specified by the CAA, but CMS proposes it anyway. "A directed POC remedy would require the hospice program to take specific actions to bring the hospice program back into compliance and correct the deficient practice(s)," CMS explains in the rule. "A hospice program's directed POC would be developed by CMS or by the temporary manager, with CMS approval. The directed POC would set forth the outcomes to be achieved, the corrective action necessary to achieve these outcomes and the specific date the hospice program would be expected to achieve such outcomes," the regulation says.

"This remedy is a part of the current HHA and nursing home alternative sanction procedures and has been an effective tool to encourage correction of deficient practices," CMS judges.

5. Directed in-service training. "Directed in-service training would be required where staff performance resulted in noncompliance and it was determined that a directed in-service training program would correct this deficient practice through retraining the staff in the use of clinically and professionally sound methods to produce quality outcomes," CMS explains in the rule. "We are proposing that hospice programs use in-service programs conducted by instructors with an in-depth knowledge of the area(s) that would require specific training, so that positive changes would be achieved and maintained."

CMS wouldn't require specific training vendors, but "hospice programs would be required to participate in programs developed by well-established education and training services," the rule says.

Each remedy has its own notice procedures. The financial remedies generally require a 15-day notice, except in IJ situations which would require only a two-day notice.

The remedies generally have a six-month cap, after which hospices must have shown enough improvement for remedies to be lifted or will face termination.

Wrinkle: AOs won't be able to recommend or apply enforcement remedies, the rule proposes. Instead, affected providers will have to be transferred to CMS oversight for the remedy process.