

## Eli's Hospice Insider

### Survey & Certification: Brace For Drastic Survey Revamp Taking Effect In October

**Stay away from the Special Focus Program, which will bring surveys every 6 months.**

Don't lose track of the sweeping hospice survey changes just because they are contained in the home health proposed rule for 2022.

**Background:** The Consolidated Appropriations Act enacted last December requires a variety of significant hospice survey changes. The law followed two high-profile HHS Office of Inspector General reports critical of the process in 2019, which garnered a lot of mainstream media attention. Hospice industry experts thought the implementing regulations for those changes might appear in the hospice rule this year, which was finalized in late July, but they did not. Instead, they showed up in the home health rule published in the July 7 Federal Register.

The rule's survey shifts are varied and numerous. Which revisions and additions affect hospices most "really depends on the hospice and their particular situation," notes **Katie Wehri** with the National Association for Home Care & Hospice.

But at the top of the list is the implementation of enforcement remedies, which the Centers for Medicare & Medicaid Services formerly called alternative sanctions. "I suspect the introduction of additional enforcement remedies... will have the most impact on hospice providers," says attorney **Liz LaFoe** with law firm Husch Blackwell's Healthcare Regulatory practice group.

"These remedies can be imposed in many situations," not just under the new Special Focus Program, Wehri points out. And the financial remedies "have the potential to severely impact the ability of hospices to remain open," she warns.

The new remedies include civil money penalties and payment suspension, among others. (See story, p. X, for more details and analysis on the new remedies.)

Additionally, as the CAA requires, CMS proposes a Special Focus Program (SFP) for "poor-performing hospice programs," it says in the rule. That includes hospices with these "specific criteria," CMS lays out: "a history of condition-level deficiencies on two consecutive standard surveys, two consecutive substantiated complaint surveys, or two or more condition-level deficiencies on a single validation survey."

**How it would work:** "A subset of hospice programs that meet the proposed criteria would be selected to be in the SFP, and those hospice programs would be surveyed every 6 months," CMS explains. Under the program, surveyors "may include progressively stronger enforcement actions in the event of a hospice program's continued failure to meet the requirements for participation with the Medicare and Medicaid programs," CMS elaborates.

"Once an SFP hospice program has completed 2 consecutive 6-month SFP surveys with no condition-level deficiencies cited, the facility would graduate from the SFP." Alternatively, "if the hospice program did not meet the requirements to graduate, it would be placed on a termination track," according to the rule. CMS already runs a similar program for long-term care facilities, it notes.



Establishing this program is "among the most significant moves CMS is taking" in the survey changes, says The Health Group in Morgantown, West Virginia. "SFPs would be authorized to impose fines, suspend reimbursement, appoint temporary management to bring the hospice into compliance, or revoke a provider's Medicare certification," the

consulting firm points out in its electronic newsletter.

But the SFP has its good points, Wehri highlights. "NAHC strongly supports additional and targeted oversight and termination of Medicare certification, as appropriate, for hospices not delivering quality care and putting patients at risk," Wehri tells AAPC. "The reforms do this."

In addition to enforcement remedies and the SFP, other potentially burdensome hospice survey changes in the home health proposed rule include:

- **Accreditation Organization (AO) process changes.** In the rule, CMS moves to make AO and state survey agency surveys more equivalent. This includes proposing to require AOs - which currently include the Accreditation Commission for Health Care, the Community Health Accreditation Partner, and The Joint Commission - to use the CMS-2567 form for the survey target's statement of deficiencies by October 2021. It also includes public reporting of those deficiencies and resulting enforcement actions by October 2022.

"Historically, these have been kept confidential" for AO-surveyed hospices, notes The Health Group. Now "CMS and the accreditors are faced with the complex task of making those reports available in a format that lay people can understand," the firm says.

In the rule, CMS discusses using the ASPEN, ASSURE, or iQIES system to achieve the goal of using the 2567 form. CMS seems to favor iQIES, since it's the newest system.

CMS notes that the CAA law "require[s] the posting of the Form CMS-2567 in a manner that is prominent, easily accessible, readily understandable, and searchable for the general public and allows for timely updates." CMS uses the Quality, Oversight, and Certification Reports (QCOR) public website for this purpose for state survey agency (SA) surveys now, it adds.

- **Hotline.** The CAA requires that SAs "must establish a dedicated tollfree hotline to collect, maintain, and update information on hospice programs and to receive complaints" by Dec. 27, 2021, the rule notes. CMS was already required to have such a hotline for home health agencies, the agency notes.

"We propose that the State or local agency is responsible for establishing and maintaining a toll-free hotline to receive complaints (and answer questions) with respect to hospice programs in the State or locality and for maintaining a unit to investigate such complaints," CMS says. The agency plans to use feedback on the HHA hotline to "inform CMS of future enhancements" to the hospice one, it adds.

**Watch for:** The comment period on the rule has closed. Hospices will find out if CMS heeds any of their feedback when it issues the final rule in late October or early November. But experts agree significant changes to the proposals are unlikely at this juncture.

"Given the deadlines of the reforms that are required by the Consolidated Appropriations Act, hospices should expect the reforms to be finalized as proposed, or at least very close to how they are proposed," Wehri advises. "However, this does not mean that CMS does not have the option to incorporate some of the comments made by stakeholders immediately or in the future," she adds.

Note: The 143-page proposed rule is at [www.govinfo.gov/content/pkg/FR-2021-07-07/pdf/2021-13763.pdf](http://www.govinfo.gov/content/pkg/FR-2021-07-07/pdf/2021-13763.pdf) - the survey section starts on p. 94 of the PDF file.