

## Eli's Hospice Insider

### Surveys & Certification: Expect Survey Changes Thanks To Latest Coronavirus Relief Package

**Watch out: 'Special focus' scrutiny and alternative sanctions are on deck.**

The new COVID-19 relief package signed into law Dec. 27 is a mixed bag when it comes to hospice surveys.

**Reminder:** Early in 2020, legislators proposed tougher hospice survey procedures in the Helping Our Senior Populations in Comfort Environments (HOSPICE) Act (H.R. 5821). The legislation came in the wake of two damning 2019 HHS Office of Inspector General reports highlighting severe quality of care problems for hospice patients. One of the HOSPICE Act's provisions was an increase in routine hospice surveys to every two years.

Now, the new law keeps that frequency at every three years. "We are deeply gratified that the package has been modified to keep routine hospice survey frequency at once every 36 months and instead focuses increased scrutiny on problem providers," says the National Association for Home Care & Hospice in a message to members.



The new focused scrutiny consists of "a special focus program for enforcement of requirements for hospice programs that the Secretary has identified as having substantially failed to meet applicable requirements of this Act," the law says. "Under such special focus program, the Secretary shall conduct surveys of each hospice program in the special focus program not less than once every 6 months."

"NHPCO supports smart oversight when it does not hinder access to high quality care for patients and their families," the National Hospice & Palliative Care Organization says in a release. "Hospice providers that are following the rules should not be subjected to excessive administrative burden and forced to needlessly divert resources from patient care," NHPCO President **Edo Banach** says.

While survey frequency will stay the same, many other things about the survey process will change. Under the law:

- By October 2022 HHS must develop alternative sanctions or "remedies" including civil money penalties, payment suspensions, and temporary management. By that time, HHS also must "develop and implement specific procedures with respect to the conditions under which each of the remedies ... is to be applied, including the amount of any fines and the severity of each of these remedies," the law says. Providers have complained that by the time they find out about a survey problem, so many fines have racked up that they can't possibly dig out of the hole. With that in mind, presumably, the law requires that "such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies."
- HHS "shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors;"
- Survey teams must include a registered nurse starting in October 2021;
- States "may not use as a member of a survey team ... an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the program surveyed ... or who has a personal or familial financial interest in the program being surveyed" starting in October 2021.
- Surveyors will not be able to conduct surveys without training and competency testing furnished by HHS.
- Surveyors may impose alternative sanctions for survey deficiencies "in lieu of terminating the certification of the program" for only six months. "If, after such a period of remedies, the program is still no longer in compliance with such requirements, the Secretary shall terminate the certification of the program," the law directs. If immediate jeopardy is cited, an immediate resolution is required or immediate termination must occur.

- HHS can fine you for being out of compliance for a time, even if you are now back in compliance.

In non-survey hospice provisions, the law requires an increase to the penalty for failing to report quality data, from the current 2 percent to 4 percent within three years.