

The [Consolidated Appropriations Act 2021](#) was passed at the end of December 2020, contains numerous provisions applicable to all provider types and some that are hospice-specific. (See [this NAHC Report](#) for earlier news & analysis on the subject.) Below is a detailed summary of the hospice-specific provisions in date order, as appropriate, and any additional information about the provision available at this time.

## **FQHC**

### **January 1, 2022**

This allows Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) to furnish and bill for hospice attending physician services when RHC and FQHC patients become terminally ill and elect the hospice benefit beginning January 1, 2022. As a result, Medicare beneficiaries will continue to receive hospice-related care from their known provider. This has been a long-desired change in the hospice industry supported by NAHC.

## **HOSPICE AGGREGATE CAP**

### **Fiscal Years 2026-2030 (October 1, 2025 – September 30, 2030)**

This extends the change to the annual updates to the hospice aggregate cap made in the Improving Medicare Post-Acute Care Transformation Act (IMPACT Act) of 2014 and applies the hospice payment update percentage rather than the Consumer Price Index for Urban Consumers (CPI-U) to the hospice aggregate cap for fiscal years 2026 through 2030.

## **SURVEY**

The Medicare hospice survey process is being transformed. Standard Medicare recertification surveys for hospices are to occur no less frequently than every 36 months through 2025. This has been extended permanently. There are numerous changes to the survey process outlined below. The impetus for survey change stems primarily from the 2019 Office of the Inspector General (OIG) reports highlighting care issues in hospices. See coverage of legislation first introduced [here](#). The survey reforms that are part of the Consolidated Appropriations Act 2021 are not exactly as they were originally introduced. Overall, hospices are pleased that surveys will be conducted no less frequently than every 36 months with special focus on lower performing hospices as opposed to all hospices being surveyed more frequently.

### **Survey Consistency**

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

### **Special Focus Program**

The Secretary shall conduct a special focus program for enforcement of requirements for hospice programs that are identified as having substantially failed to meet applicable requirements. Under this program surveys will be conducted not less than once every 6 months.

Providers may already be familiar with the Special Focus Facility (SFF) program utilized for nursing homes. The way CMS identifies nursing homes for this program is to calculate a score based on the previous three years' survey results using the same domains as used for the Five Star Quality Rating System for nursing homes. There are then a minimum of five and maximum of 30 nursing homes per state that are eligible for the SFF program. We do not believe there is data of the amount and type for CMS to apply the same calculations to hospices. NAHC will be advocating for an appropriate calculation for hospices based on the hospice data available to CMS.

## **Survey Deficiencies**

### **Deficiencies Involving Immediate Jeopardy**

The secretary shall take immediate action to ensure removal of the jeopardy and correction of the deficiency(ies) or terminate certification. In addition to these actions, one or more of the remedies as listed under the sub-heading NO LATER THAN OCTOBER 2022 below in this article may be applied.

### **Deficiencies Not Involving Immediate Jeopardy**

For a period not to exceed 6 months, remedies (as listed below under NO LATER THAN OCTOBER 2022) may impose in lieu of termination. If, after such a period of remedies, the program is still not in compliance, it shall be terminated.

### **Penalty for Previous Non-Compliance**

If it is determined that a hospice program is in compliance with the requirements but, as of a previous period, did not meet requirements, a civil money penalty may be imposed for the days in which the program was not in compliance with requirements.

### **Option to Continue Payments for Non-Compliant Hospices**

When deficiencies exist, Medicare payment can continue over a period of not longer than 6 months if:

1. the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the hospice than to terminate the certification of the hospice

2. the hospice has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action
3. the hospice agrees to repay to the Federal Government payments received under this title during such period if the corrective action is not taken in accordance with the approved plan and timetable

The Secretary shall establish guidelines for approval of corrective action for hospices under this program.

### **Other Survey Reforms**

The following reforms are listed by the dates for which they are to be implemented.

#### **October 2021**

- *Funding:*
  - An additional \$10,000,000 will be available for each fiscal year (beginning with fiscal year 2022) for purposes of carrying out the survey reforms.
  - Any of this additional funding that is not used each fiscal year will remain available until expended.
  - *No later than 10/1/2021, HHS shall provide for comprehensive training* for state, Federal, and Accrediting Organization (AO) surveyors, including training related to review of written plans of care
  - *AOs must complete CMS Form 2567 and submit it to CMS.* This form is currently only utilized by state survey agencies.
- *Survey team:*
  - - Surveys conducted on or after 10/1/2021 by more than one person must be conducted by a multi-disciplinary team (including RN)
    - State surveyors may not survey programs by which they have been employed/acted as consultant in previous 2 years or in which surveyor has personal or familial financial interest
    - No one may serve as a member of a survey team unless they have completed a training and testing program approved by HHS

#### **No Later Than October 2022**

- *HHS shall publish survey/certification information online* in a manner that is “prominent, easily accessible, readily understandable, and searchable”, and the information shall be updated in a timely manner. This includes state survey agency (SA) and AO survey/certification information. The information to be displayed includes the survey report and enforcement actions.
- 1. *The Secretary shall establish the following remedies (below) for programs and appropriate procedures for appealing determinations relating to the imposition of these remedies.* The Secretary shall 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. 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. The remedies are in addition to sanctions otherwise available under State or Federal law. This would include exclusion from participation in the Medicare program.

- Civil money penalties in an amount not to exceed \$10,000 for each day of noncompliance by a hospice program
  - The Secretary may provide that any portion of civil money penalties collected under this subsection may be used to support activities that benefit individuals receiving hospice care, including education and training programs to ensure hospice program compliance
- Suspension of all or part of the payments to which a hospice program would otherwise be entitled under Medicare
  - A finding to suspend payment shall terminate when the hospice is found to be in substantial compliance with all requirements
- The appointment of temporary management to oversee the operation of the hospice program and to protect and assure the health and safety of the individuals under the care of the program while improvements are made in order to bring the program into compliance with all such requirements.
  - Temporary management shall not be terminated until it has been determined that the hospice has the management capability to ensure continued compliance with all the requirements

### **Fiscal Year 2024 (October 1, 2023)**

*The financial penalty for not participating as required in the Hospice Quality Reporting Program (HQRP) will increase to 4% of the hospice's annual payment update. The current penalty is 2 percent. Hospices should note that the reporting year associated with the FY2024 annual payment update is January 1, 2022 – December 31, 2022 so hospices will want to take extra precautions to ensure their Hospice Item Set (HIS) and CAHPS Hospice Survey data is submitted as required for 2022.*

The reform related to the posting of hospice survey and enforcement information is not completely new as results of SA surveys (not routine AO surveys) are currently and have been available to the public on the [QCor](#) website. This site does not contain the full survey report as it is written on the CMS-Form 2567 (Statement of Deficiencies), but the site does allow for semi-customized reports to be run which do show what deficiencies a hospice received on survey. Some states have the CMS-Form 2567 available on the SA website or upon request. The results of complaint surveys conducted by SAs and AOs are also available on the QCor site. Accuracy of the data on this site is dependent upon submission of survey results from SA surveys and complaint survey results from SAs and AOs to CMS. There may be significant delays in postings.

