# Q&A Targeted Policy Solutions Needed to Strengthen Hospice Program Integrity

HOMECARE & HOSPICE
National Association for Home Care & Hospice

### Why is a rapid increase in the number of hospices in some states concerning?

- A large, concentrated, and relatively rapid increase in the number of hospice providers in certain specific geographic areas may indicate that some of the growth is due to exploitative individuals or entities entering the program with the primary purpose of defrauding government payers of health care at the expense of high-quality patient care.
- In past efforts to crack down on fraud in Medicare, CMS has indicated that it views high or unusual rates in the following categories as potential signs of fraud: the number of providers per 10,000 Medicare FFS beneficiaries, the compounded annual growth rate in provider or supplier enrollments, and the "churn rate" (the rate of providers entering and exiting the program).
- Widespread fraud and abuse within the Medicare hospice program not only wastes huge amounts of taxpayer dollars, but it can also result in real and lasting physical, emotional, mental, and financial harm to the most vulnerable patients and families.

### What are some of the negative impacts this fraudulent or abusive behavior has on actual patients and families? Do you have any examples to share?

- If a beneficiary is enrolled in one of these fraudulent hospices under false pretenses, the results can be disastrous. If the individual is not actually terminally ill and never told that enrolling in hospice means foregoing Medicare coverage of "curative" treatments, then they may not end up getting the disease-focused treatments they want and need.
  - An egregious example of this (from a 2020 LA Times story) is a 47-year-old woman who lost her place on a waiting list for a liver transplant when she signed up for hospice without being told what it actually was. It took her months to get reinstated on the list, and she died not long after finally receiving a new organ.
- Even if the patient who is signed-up for one of these hospices is eligible by nature of their terminal illness, many of these so-called providers are totally unresponsive to patient and family needs, and often leave them without necessary supports or communication.
  - An example (from the 2022 California Auditor report) is how a hospice agency never fulfilled its promise of providing a hospital bed to a patient who desperately needed one. Not only that, but the patient and their caregiver were never told that hospice patients are not provided with curative treatment while receiving hospice services.

### Isn't much of the problem at the state level, with poor oversight of the licensing process from state departments of health? If so, why should Congress and CMS at the federal level get involved?

- Hospice participation in Medicare and/or Medicaid is contingent upon state licensure as well as federal Medicare certification, and CMS contracts with states to conduct hospice health and safety surveys. So there is a role for both the states and CMS in oversight of Medicare hospices. Even in cases where a state takes action to limit hospices licensure, federal action may still be needed to stem the growth in the number of hospices. For example, while California implemented a moratorium on licensure of new hospices effective January 2022, there were hundreds of hospices already licensed, nearly 400 of which (398) have since become Medicare-certified. In this case, a federal moratorium would have prevented certification of those additional agencies.

### Are the hospice associations doing anything at the state-based level to try and address these issues?

- Yes. NAHC and NHPCO have begun a working group comprised of state association representatives and other experts to identify valuable data and informational resources for states and to identify action that can be taken at the state level to improve oversight of hospice.

**If some or all of the hospice associations' program integrity recommendations were to be implemented, how could we make sure not to negatively impact patient access to legitimate hospice services in the process of going after the bad actors?**

- We do not believe that implementing the program integrity recommendations in a targeted way will have negative impacts on access to hospice care. The key is for Congress and CMS to truly hone in on tailored solutions that can identify and address the most inappropriate providers.
- Likewise, it is clear from the data that some areas experiencing massive hospice growth do not have access challenges, and in fact likely have many more hospices than would be needed based on their Medicare beneficiary population and other factors (ex. LA county has around 1500 Medicare certified hospices).
- Finally, policymakers have the authority to create exceptions to certain program integrity solutions (ex. moratoria) that would allow well-intentioned and compliant hospices to continue serving and/or expanding their area if there is a genuine need.

**Would the hospice associations' program integrity recommendations cost additional money to implement? Would Congress need to authorize and appropriate separate funding to implement some of the changes?**

- Many of the recommendations can be implemented by CMS using existing authority, although some may have a nominal impact on CMS outlays.

**Is the problem that there are too many for-profit hospices, and it is the profit motive that is driving this fraudulent activity?**

- We do not view the fraudulent or exploitative entities who enter the hospice program for the wrong reasons in the context of "for-profit" or "non-profit" providers. We would not even consider most of them to be "providers" in the sense that they are mostly unconcerned with patient and family quality of care and quality of life, and merely see the hospice benefit as a vehicle for bilking the government out of money.
- The tax status of a hospice alone does not tell you much about the quality of care that hospice provides. The vast majority of hospice providers, regardless of tax status, ethically fulfill their mission of caring for dying patients and their families, and are not in the business to bend the rules merely to maximize profit. A recent JAMA study comparing for-profit and not-for-profit hospices concluded that "choice of a hospice should not assume that profit status is a proxy for quality, but should be guided by the reported care experiences and other quality indicators for a particular hospice."
- The average score of for-profit hospices on CMS' new Hospice Care Index (HCI) composite quality measure is 8.7 out of 10.
- While hospice did originally start out in the 1970s as a volunteer and non-profit endeavor, many of the early pioneers lamented the fact that so few people were able to avail themselves of this kind of care, given the dependence on charity, donated time, and lack of sustainable payment for the services delivered.
- The growth in recent years of the number of hospices has also coincided with an increase in the number and proportion of people using the Medicare hospice benefit:
- In 2000:
  - Hospice use:
    - 460,000 people used the Medicare hospice benefit, representing 23% of Medicare decedents.
- In 2020:
  - Hospice use:
    - 1.3 million people used the Medicare hospice benefit, representing 47.8% of Medicare decedents
- It is costly to open a new hospice as the new entity must have sufficient resources to fund significant startup costs, including establishment of an office, direct hiring of multiple care disciplines, licensure and certification costs, and care of an initial set of patients without access to any reimbursement. For this reason, very few new hospices are able to enter the program without an investment source.

### Would the hospice associations' program integrity recommendations only impact new hospice providers? Or would some of them also apply to existing providers as well?

- While the principal goal in developing these program integrity recommendations is to stem the entry of suspect hospice entities into the Medicare program and to increase oversight of new providers, the hospice associations have also included some recommendations that would impact existing hospices relative to areas of concern in order to strengthen the integrity of the hospice program.

### Do you have an estimate of how much money these fraudulent or exploitative hospices are billing Medicare for?

- We do not currently have an estimate of the overall cost to Medicare of this behavior. CMS needs to dig into its billing and claims data to better understand the scope of the money being siphoned away.
- We do believe this number is significant. The California auditor report estimated LA county hospice agencies likely overbilled Medicare by $105 million in 2019 alone.

### Will the recent hospice survey reforms from the HOSPICE Act legislation that are now being implemented help address the fraud and abusive behavior from bad actor hospices?

- We believe the HOSPICE Act reforms, which primarily focus on the hospice survey process, will help generally improve hospice oversight and quality (if CMS and state survey agencies are adequately funded to implement the changes).
- However, some of the problems that have been identified related to inappropriate licensure and certification growth would not be directly addressed by the recent survey reforms. CMS needs to do more on the provider enrollment and certification side in order to stem the troubling patterns we are now seeing in select geographies.

### Won't some of the hospice associations' program integrity recommendations add new administrative obligations to hospices?

- To the extent possible the recommendations have been designed to target problem providers and to limit the impact on existing providers with established track records.


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