

# Targeted Policy Solutions Needed to Strengthen Hospice Program Integrity



The vast majority of the more than 5,300 Medicare-certified hospices across the nation honor the spirit of the original hospice mission by providing high-quality, holistic care to dying individuals and their families. Sadly, the recent entry of some opportunistic operators unconcerned with patient welfare are taking advantage of gaps in the hospice oversight infrastructure for their own ill-gotten financial gain, defrauding Medicare and harming the most vulnerable beneficiaries in the process.

**Congress and CMS should work together to enact targeted program integrity solutions to identify and crack down on those who would intentionally exploit the Medicare hospice benefit.**

## THE PROBLEM:

### Explosive and Disproportionate Hospice Growth in Some States

Recent investigations have highlighted an alarming trend in a handful of states -- huge spikes in the number of hospices being licensed (by the state) and certified (by Medicare) in recent years, along with unusual billing and operational activity that suggests willful fraud or abuse of the hospice benefit.

- A [2022 report](#) by the **California** State Auditor found that state licensure practices and weak oversight of hospice agencies created opportunities for large-scale fraud and abuse in the Medicare and Medicaid programs, primarily concentrated in Los Angeles County, which, as of January 2023, had over 1500 Medicare certified hospices, a number that far outstrips need. The report argues that “many of these hospice agencies may have been created to fraudulently bill Medicare and Medi-Cal for services rendered to ineligible patients or services not provided at all”. The Auditor’s office estimates that that LA County’s hospice agencies likely **overbilled Medicare by \$105 million in 2019 alone**.
- After a state-wide moratoria on new hospice licenses was enacted in California in 2022, similar troubling activity has spread to neighboring states, including Arizona, Nevada, and Texas<sup>1</sup>.



In **Arizona**, 156 new hospice providers were Medicare certified between 2018 and 2022, 57% of all providers in Arizona.



In **Nevada**, 71 new hospices were Medicare certified between 2018 and 2022, 63% of all hospices now operating in Nevada.



In **Texas**, 418 new hospice providers were Medicare certified between 2018 and 2022, an increase of 43% of all hospices now operating in Texas.

In addition to rapid growth in hospice agencies with no clear correlation to need, other red flag behavior includes: excessive geographic clustering of hospices (in one case, 120 separately licensed agencies are located in the same building, 75 of which are Medicare certified); unusually long durations of hospice services provided to individual patients; abnormally high rates of still-living patients discharged from hospice care; hospice agencies using possibly stolen identities of medical personnel; and overly-aggressive marketing and solicitation tactics that target individuals who may not qualify for Medicare hospice coverage or even be aware that they are being asked to sign up for hospice.

**When unsuspecting patients and families get wrapped up with fraudulent hospices, they can suffer real and lasting consequences, including not receiving the types or level of care they need, or in some cases, any care at all.**

<sup>1</sup> All hospice data for AZ, NV & TX comes from CMS’ Quality, Certifications, and Oversight Reports (QCOR) database: <https://qcor.cms.gov/main.jsp>

## THE RESPONSE:

# The Hospice Community and Policymakers Are Working to Root Out Fraud

## Hospice Associations

After months of research and data review, the four national hospice associations (The National Association for Home Care & Hospice, the National Hospice & Palliative Care Organization, The National Partnership for Healthcare & Hospice Innovation, and LeadingAge) **wrote to CMS in November 2022**, asking that the agency vigorously investigate the problem further and strongly consider instituting targeted moratoria on Medicare hospice certification in counties with the most troubling growth trends.

In January 2023, the hospice associations collectively released a **comprehensive list of 34 different program integrity policy recommendations** aimed at shoring up hospice oversight gaps and more effectively identifying and preventing bad-intentioned individuals and entities from entering the Medicare hospice program.

This most recent proactive policy engagement follows multiple past advocacy efforts by NAHC to improve compliance and quality in the Medicare hospice program. Examples include developing a comprehensive list of hospice integrity policy recommendations in 2013, working with Congress in 2014 to support the federal IMPACT Act, which required hospices to be surveyed every three years (which was paid for by a change to the annual update for the hospice aggregate cap), and collaborating with lawmakers and other national hospice organizations in 2019 to help shape the HOSPICE Act, a series of hospice survey and oversight reforms that are only now in the process of being implemented.

## Congress

In December 2022, members of the Senate's Comprehensive Care Caucus also **wrote to CMS and the HHS OIG**, raising concerns about hospice agency proliferation, and asking the agencies investigate and brief the lawmakers on the problems and their response.

Members of the House Ways and Means Committee **sent a similar letter to CMS** in February 2023.

## Potential Solutions

Congress and CMS must work expeditiously to advance changes that make it harder for fraudulent hospice operators to enter and stay in the Medicare program. Priority actions (drawn from the national hospice organizations' 34 recommendations) include:

- **Institute targeted moratoria of Medicare hospice certifications in counties with the most troubling growth trends**
  - To include appropriate exceptions to ensure continued access to care
- **Enhance oversight of new providers:**
  - Conduct more frequent surveys of new hospices
  - Enhance and require participation by new hospices in training by Medicare's Administrative Contractors (MACs)
- **Terminate inappropriate hospice programs:**
  - Intensify scrutiny of hospices that engage in suspect ("red flag") activity for potential removal from the Medicare program. Such "red flags" could include:
    - Hospices that don't bill Medicare
    - Multiple hospices co-located at a single address
    - Individual hospice administrators overseeing many hospices simultaneously
- **Prohibit the sale or transfer of Medicare hospice certification numbers for a specified timeframe**
  - This could mirror the 36-month change of ownership prohibition in the Medicare home health program
  - To include appropriate exceptions to ensure continued access to care
- **Modify Conditions of Participation (CoP)s to require hospices to develop a marketing practices policy that includes:**
  - Marketer standards of conduct, including disclosure to patients & families of the nature of the hospice benefit, hospice eligibility, choice of palliative versus curative care, and waiver of rights to some Medicare-covered services.
  - Marketer compensation arrangements that comply with the anti-kickback and other applicable statutes.
- **Modify CMS' consumer-facing Care Compare website to include information to increase patient and family understanding of how to choose a high-quality hospice provider. New elements could include:**
  - Whether the hospice participates in CMS' Hospice Quality Reporting Program (HQRP)
  - Greater prominence for the date of a hospice's certification and/or latest change of ownership
  - Greater prominence for quality-related data so consumers can more readily see a hospice's care delivery track record