

National Hospice and Palliative Care Organization  
**Policy Alert**

## **House Introduces Bipartisan Legislation to Address Hospice Program Integrity Issues**

TO: NHPCO Provider Members

FROM: NHPCO Policy Team

DATE: February 10, 2020

### **Summary**

On February 10, 2020, Representatives Jimmy Panetta (D-CA) and Tom Reed (R-NY) in coordination with the House Ways and Means Committee introduced legislation, [H.R. 5821](#), a bipartisan bill entitled the *Helping Our Senior Population in Comfort Environments Act*, (*the HOSPICE Act*), to address the concerns identified by the HHS Office of Inspector General about CMS monitoring of hospice, hospice survey deficiencies and patient harm.

NHPCO supports the policies in the bill that closely tracks some of NHPCO's recommended Hospice Program Integrity Initiatives, but also has some serious concerns about the increase in frequency of hospice surveys and the inclusion of civil monetary penalties. The bill is scheduled to be marked-up (reviewed) by the House Ways and Means Committee on February 12, 2020. During the mark up process, the bill will be considered, modified and could be passed by the committee. After the committee vote, the bill can be considered by the full House for passage.

Thank you to the Legislative, Regulatory, and Quality and Standards Committees for their work on vetting and approving the program integrity measures that were included in this legislation. NHPCO will continue to engage with the sponsors of the legislation and push to further refine the legislation to achieve better targeted legislative language that improves quality of hospice care while reducing administrative burden for those who follow the rules as well as enhanced access to hospice.

**OIG Reports and Hospice Program Integrity:** In July 2019, the HHS Office of the Inspector General (OIG) issued two reports that outlined deficiencies with CMS monitoring of hospice and examples of poor care. The reports attracted a great deal of negative attention from policy makers, were featured on NPR and the NBC nightly news and caused some members of Congress to say that “we have to do something about hospice.” The “do something” could have meant public hearings on hospice, a Congressional investigation or worse, definitely not the publicity that the hospice community would want.

In addition, on July 30, 2019 House Ways and Means Committee Chairman Richard E. Neal (D-MA) and Ranking Member Kevin Brady (R-TX) sent [a letter](#) to the Centers for Medicare & Medicaid Services (CMS) requesting information regarding the agency’s efforts to address certain hospice failings as well as information on the 313 hospice providers that the OIG identified as “poor performers” as identified in their July 2019 reports.

NHPCO staff immediately began dialogue with the relevant Congressional committee staff on both the House and Senate side, as well as with other national hospice stakeholders. In addition, discussions have been ongoing with both the OIG and CMS to identify key areas where legislative action could be helpful in addressing hospice program integrity issues.

### **Discussions with NHPCO Regulatory, Legislative Affairs and Quality and Standards**

**Committees:** Shortly after the OIG reports were published, NHPCO engaged the Regulatory, Legislative Affairs, and Quality and Standards Committees to discuss hospice program integrity issues identified by the OIG. NHPCO staff shared these discussions with policymakers, House and Senate committee staff, the OIG and CMS with the three NHPCO committees to continue the dialogue and to identify a series of program integrity initiatives that would address the concerns noted in the OIG reports.

Each committee voted on each of the program integrity initiatives and only those who were approved by all three committees were included in the final [NHPCO Program Integrity Initiative](#) document. The input from committee members, almost 100 hospice staff and supporters from throughout the country, was instrumental in the discussions with both House and Senate staff. NHPCO staff shared the Program Integrity Initiative document in discussions with legislative champions to craft draft legislation that would balance the need for smart, targeted oversight and education for surveyors and hospices without imposing excessive administrative burden.

## Provisions of the House Bill

The “Helping Our Senior Population in Comfort Environments” Act, [the HOSPICE Act](#), includes provisions that aim to establish hospice program survey and enforcement procedures, increase reported hospice survey deficiency data, ensure that survey data is available to consumers in an easy-to-understand format, and improve the survey process by requiring education and competency for surveyors.

Details about the bill follow.

**Section 1: Bill Title:** “Helping Our Senior Population in Comfort Environments” Act or the “HOSPICE Act”

### Section 2: Establishing Hospice Program Survey and Enforcement Procedures

#### A. Surveys

- **Frequency** – The House bill specifies that an entity certified as a hospice program be certified by either a State or local survey agency or approved accreditation agency not less frequently than once every 36 months for 2020. However, the bill specifies that on October 1, 2021, the frequency would change to once every 24 months.
- **Public Transparency of Surveys and Certification Information** – State or local survey agencies and national accrediting organizations will be required to submit survey and certification inspection reports and enforcement actions taken as a result of surveys. In addition, on or after October 1, 2021, national accreditation organization bodies will be required to submit Form 2567 (or any successor form) to CMS, along with additional information determined by the Secretary.
- **Public Disclosure of Information** – Not later than October 1, 2022, the Secretary shall publish the information on the CMS public website in a manner that is prominent, easily accessible, readily understandable, and searchable. The timely update of this information is also required.
- **Consistency of Surveys** – Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

- **Survey Teams** – Surveys conducted by more than 1 individual will include multidisciplinary professionals, including a registered nurse.
- **Prohibition of Conflicts of Interest** – States may not use an individual who is serving (or has served within the previous 2 years) as 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 surveyed.
- **Training and Surveyor Competency** – Beginning no later than October 1, 2021, the bill requires the Secretary to establish comprehensive surveyor training for State and Federal surveyors, including training on the review of written plans for providing hospice care. No individual can serve as a member of a survey team **unless** the individual has successfully completed a training and testing program in survey and certification techniques approved by the Secretary.
- **Funding** – \$10,000,000 will be transferred annually from the Federal Hospital Insurance Trust Fund to CMS Program Management for the purposes of carrying out hospice surveys.

## **B. Special Focus Program**

The special focus program is established to provide additional support and enforcement of hospice requirements for programs with ongoing compliance issues and an inability to meet the applicable requirements of in the Medicare COPs. Under such special focus program, surveys will be conducted no less than once every 6 months.

## **C. Enforcement**

- **Situations Involving Immediate Jeopardy** – If a surveyor identifies deficiencies during the survey process that involve immediate jeopardy of the health and safety of patients, the surveyor shall take immediate action to remove the jeopardy and correct the deficiencies through a range of alternative remedies listed in Section D below.
- **Situations Not Involving Immediate Jeopardy** – If the surveyor identifies a deficiency that does not involve immediate jeopardy for the health and

safety of patients, a remedy may be imposed for a period of not to exceed 6 months in lieu of termination of certification. If the hospice program is not in compliance after six months, the Secretary shall terminate the provider's certification.

- **Penalty for Previous Noncompliance** – There is a provision in this bill for the Secretary to issue a civil monetary penalty (CMP) for a non-compliance that has occurred in a previous period, for the days that the hospice program was not in compliance.
  
- **Option to Continue Payments for Noncompliant Hospice Programs**
  - Conditions:
    1. The State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the program with such requirements rather than to terminate the certification of the program;
    2. The program 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 program 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.
    4. The Secretary shall establish guidelines for approval of corrective actions requested by hospice programs.

#### **D. Remedies**

- **Development-** No later than October 1, 2021, the Secretary shall develop and implement a range of remedies to apply to hospices, including the development of procedures for the conditions under which each of the remedies will be used. The bill also suggests that the procedures should be designed to minimize the time between the identification of deficiencies and the imposition of remedies. Procedures for appeals of the imposition of remedies are also included.
  
- **Specified Remedies**
  1. **Civil monetary penalties** in an amount not to exceed \$10,000 for each day of noncompliance by a hospice program with the requirements specified in the Medicare COPs.

2. **Suspension of all or part of the payments** to which a hospice program would otherwise be entitled with respect to items and services furnished by a hospice program on or after the date on which the Secretary determines that remedies should be imposed.
  3. **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.
- **Procedures for Applying Remedies**
    1. **CMPs**
      - CMPs shall apply in the same manner as such provisions apply to a penalty or proceeding under section 1128A (a)
      - CMPs collected under this bill would be used to support activities that benefit individuals receiving hospice care, including education and training programs to ensure hospice compliance COPs.
    2. **Suspension of payment:**
      - Suspension of payment will terminate when the Secretary finds the program in substantial compliance with all such requirements.
    3. **Temporary management:**
      - Temporary management will be terminated when the Secretary has determined that the program has the management capability to ensure continued compliance with all the referred requirements.
    4. **Other sanctions:**
      - The remedies specified in this bill are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

## **Additional Provisions:**

**Availability of Hospice Accreditation Surveys** – The Secretary is authorized to disclose accreditation surveys to the same extent as they are currently authorized with respect to home health agency accreditation surveys.

**Increasing Payment Reductions for Failure to Meet Quality Data Reporting Requirements** – For fiscal year 2023, and each subsequent year, the payment reduction will increase from 2% to 4%. The payment reduction will be applied when a hospice provider does not participate in quality reporting requirements.

**Report** – No later than October 1, 2024, the US Comptroller General will submit a report to the House Ways and Means Committee and the Senate Finance Committee that analyzes the effects of the remedies identified in the legislation, including the quality and frequency of application of remedies, and the access to and quality of care furnished by hospice programs.

## **Senate Legislation**

On November 7, 2019, Senators Rob Portman (R-OH) and Ben Cardin (D-MD) introduced S. 2807, a bipartisan bill entitled the *Hospice Care Improvement Act of 2019*, in response to the concerns identified by the HHS Office of Inspector General (OIG). NHPCO supports many of the policies in that bill as they closely track NHPCO's recommended Hospice Program Integrity Initiatives. This legislation differs from the House bill just introduced on February 10 and does **not** include a special focus program, funding for increased surveys, nor the alternative sanction/remedy of CMPs.

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If you have any questions about this bill, please reach out to Mark Slobodien, Director of Legislative Affairs, at [MSlobodien@nhpc.org](mailto:MSlobodien@nhpc.org) or Judi Lund Person, Vice President, Regulatory and Compliance at [jlundperson@nhpc.org](mailto:jlundperson@nhpc.org)