

CY 2022 Home Health Final Rule – Survey and Enforcement Requirements for Hospices

To: *NHPCO Provider and State Members*

From: *NHPCO Regulatory Team*

Date: *November 8, 2021*

Summary at a Glance

On November 2, 2021, the Federal Register posted [CMS-1747-F](#), the CY 2022 Home Health Prospective Payment System Rate Update Final Rule... Survey and Enforcement Requirements for Hospice Programs.

Important changes from the proposed to final rule:

1. **Suspension of all or part of payments:** NHPCO advocated for this provision to be limited to new admissions. In the final rule, CMS changed the language to read that the suspension of payments is **for new admissions only**.
2. **Special Focus Program:** NHPCO advocated for a Technical Expert Panel (TEP) to be convened to provide input prior to the development of any hospice Special Focus Program. In the final rule, **CMS removed the regulatory language about the creation of the Special Focus Program** and cited that revised language would be included in future rulemaking for FY 2024.
3. **Surveyor conflict of interest:** NHPCO advocated for ways that CMS could address surveyor conflict of interest. In the final rule, at 488.1110, CMS changed the language on surveyor conflict of interest to read: **“surveyors must disclose actual or perceived conflicts of interest prior to participating in a hospice program survey and be provided the opportunity to recuse themselves as necessary.”**

CMS has also issued the [QSO-22-01-Hospice](#) memo addressing the timeline for implementing the regulatory provisions of the CAA 2021 hospice provisions outlined in the CY 2022 HH final rule.

Details of the [CY 2022 Home Health... \[CMS-1747-F\]](#) hospice survey reform and enforcement provisions follow.

A. **Application and Reapplication Procedures for National Accrediting Organizations (§ 488.5)**

1. **Use of the CMS-2567:** Accrediting organizations (AOs) are required to include the Form CMS-2567 in their reports to CMS; however, the AO surveyor is allowed to use their own form and translate survey findings to the Medicare Conditions of Participation (CoPs) on the Form CMS-2567. CMS states that “including the AO survey findings on the Form CMS-2567 will allow CMS

to post hospice survey deficiency reports from SAs and AOs in a manner that is standardized across both types of surveying entities.”

2. **Plan of Correction:** A hospice can document their POCs in their preferred format, including the format currently used by an AO. However, CMS states that all [elements](#) of an acceptable POC, as “outlined in the [State Operations Manual, Chapter 2](#), Section 2728B, are still required regardless of which format or document is used.”
3. **Release and Use of Accreditation Surveys (§ 488.7):** CMS finalized a new provision at § 488.7(c), which would require the posting of the Form CMS-2567 in a manner that is prominent, easily accessible, readily understandable, and searchable for the general public and allows for timely updates. CMS stated that the “publication of the Form CMS-2567 is a first step in meeting the intent of this provision.” CMS also committed to continuing collaboration with hospice stakeholders and will consider convening a TEP or other vehicle to gather stakeholder input.
4. **Non-compliant hospice program with deficiencies:** CMS clarified that the Plan of Correction (POC) must be submitted for approval by the SA or CMS. Only CMS can impose an enforcement remedy or termination or both. The POC provisions are included in the new Subpart N, detailed further down below.

B. New Subpart M – Survey and Certification of Hospice Programs

1. **Frequency of Surveys (§ 488.1110(a)):** Hospice programs will continue to be surveyed not later than 36 months after the date of the previous survey by the SA or AO.
2. **Hospice Program Surveys and Hospice Program Hotline (§ 488.1110):** The CAA 2021 added hospice programs to the previous hotline requirement for home health agencies with an effective date of December 27, 2021. The hotline will:
 - a) collect, maintain, and continually update information on HHAs and hospice programs located in the State or locality that are certified to participate in the program established under this title; and
 - b) to receive complaints (and answer questions) with respect to HHAs and hospice programs in the State or locality.

State decision on implementation: State or local agencies that have existing toll-free hotlines for home health agency complaints can utilize this hotline to also collect and maintain information on hospice programs. However, the State or local agency may decide to establish a separate toll-free hotline specific to hospice programs.

Complaints: CMS stated that they “currently maintain a national complaint tracking and prioritization system which prioritizes complaints according to the level of risk for a hospice program’s patients.” Complaints that indicate the possibility of an immediate jeopardy situation are given the highest priority and investigated by the State as soon as possible. The State Operations Manual, chapter 5, specifies the timeframes and procedures by which all types of complaints should be investigated.

NOTE: Hospice providers should track the decision of the State or local agency about the hospice hotline and verify whether the toll-free phone number for consumers to use for questions, concerns and complaints has changed as this final rule is implemented. This could impact the information provided to patients and families in the patient admission materials.

3. **Surveyor Qualifications and Prohibitions on Conflicts of Interest (§ 488.1110)**
 - a. **Surveyor training requirement:** CMS will provide training for State and Federal surveyors, and any surveyor employed by an AO, including a training and testing program approved by

the Secretary, no later than October 1, 2021. No surveyor can conduct hospice program surveys until they complete training and testing.

- b. Surveyor training link:** The training modules are available free of charge to surveyors, hospice providers, and the general public through the QSEP website at <https://gsep.cms.gov>.
- c. Training emphasis:** The updated training will emphasize the assessment of quality of care, focused on the four “core” hospice program CoPs in revisions to the CMS State Operations Manual (SOM) (Pub. 100-07). The four core CoPs (identified in the preamble of the final rule, Medicare and Medicaid Programs; Hospice Conditions of Participation (73 FR 32088, June 5, 2008)) are
- §418.52 Condition of Participation: Patient’s rights;
 - §418.54 Condition of Participation: Initial and comprehensive assessment of the patient;
 - §418.56 Condition of Participation: Interdisciplinary group, care planning and coordination of care;
 - §418.58 Condition of Participation: Quality assessment and performance improvement.

The revised training will emphasize individualized written plans of care and regular updates with the full involvement of the interdisciplinary team, patients, and their families. In addition, hospice programs must comply with all CoPs to achieve successful certification and recertification.

- d. Surveyor conflict of interest:** The details of surveyor conflict of interest were outlined in the proposed rule are finalized as amended and apply to both SA and AO surveyors. A surveyor would be prohibited from surveying a hospice program if the surveyor currently serves, or within the previous two years has served, on the staff of or as a consultant to the hospice program undergoing the survey. Specifically, the surveyor cannot be:
1. a direct employee, employment agency staff at the hospice program, or an officer, consultant, or agent for the surveyed hospice program regarding compliance with the CoPs.
 2. A surveyor would be prohibited from surveying a hospice program if he or she has a financial interest or an ownership interest in that hospice.
 3. The surveyor would also be disqualified if he or she has an immediate family member who has a financial interest or ownership interest with the hospice program to be surveyed or has an immediate family member who is a patient of the hospice program to be surveyed.
- e. Immediate family member defined:** The definition of “immediate family member” located at § 411.351, also used for similar HHA regulations includes:
- husband or wife;
 - birth or adoptive parent, child, or sibling;
 - stepparent, stepchild, stepbrother, or stepsister;
 - father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;
 - grandparent or grandchild; and spouse of a grandparent or grandchild.
- f. Final rule requirement for disclosure of conflicts of interest:** Based on commenter concerns (including NHPCO’s), CMS modified the regulation at § 488.1115 to add a requirement that “surveyors must disclose actual or perceived conflicts of interest prior to participating in a

hospice program survey and be provided the opportunity to recuse themselves.” CMS also commented that it would review existing training and update training modules as needed to address conflict of interest.

4. Survey Teams (§ 488.1120)

- a. **Multi-disciplinary survey teams:** The CAA 2021 added a section calling for the use of multidisciplinary survey teams when the survey team comprises more than one surveyor, with at least one person being a RN.
- b. **Make up of teams:** § 488.1120 requires that all survey entities—SA or AOs—include diverse professional backgrounds among their surveyors to reflect the professional disciplines responsible for providing care to persons who have elected hospice care, including physicians, nurses, medical social workers, pastoral or other counselors—bereavement, nutritional, and spiritual.
- c. **RN as member of survey team:** CMS states that this is a statutory requirement and consistent with guidance in the SOM, Appendix M. Because an RN will be on every survey team, to ensure that the survey team is multidisciplinary, if there is more than one surveyor, then the additional team members must be selected from other disciplines included in the interdisciplinary group.
- d. **Tracking compliance:** CMS will track compliance with this provision among SAs and AOs by developing a baseline knowledge of the “extent to which surveys are conducted by one professional, the professional makeup of the current workforce, and an estimate of the timeframe for implementing a multidisciplinary team.”

5. Consistency of Survey Results (§ 488.1125)

Oversight: CMS monitors the consistency of SA surveys through a review of an SA’s Form CMS-2567s (the Statement of Deficiencies and Plan of Correction), by the CMS Survey Operations Group (SOG) Location (formerly regional office), and consistency among AOs through validation surveys conducted by SAs. Validation surveys are also performed, which report disparate findings as the percentage of validation surveys that have conditions identified by the SA but missed by the AO survey team. This percentage is referred to as the “disparity rate” and is tracked by CMS as an indication of the quality of the surveys performed by the AO. This is reported annually in a report to Congress (QSO-19-17-AO/CLIA). The most recent [survey consistency] report can be found at the [Survey Consistency Report](#). CMS states that this oversight allows CMS to assess that surveyors are thorough, accurate and consistent in their findings.

6. Special Focus Program (SFP) (§ 488.1130)

- a. **Proposed rule:** In the proposed rule, CMS proposed criteria and a process for hospice programs who meet the proposed criteria for selection to be in the Special Focus Program, which could result in additional enforcement remedies and/or termination.
- b. **Final rule:** NHPCO stated that CMS should not implement this provision until a comprehensive framework could be established for the identification and enrollment of hospice programs to the SFP. Commenters agreed that CMS should establish a Technical Expert Panel (TEP) to assist CMS in developing the framework for the SFP, including relevant tools and education to assist hospice providers who are participating in the SFP to improve quality and compliance.

- c. **Final decision: CMS is not finalizing the proposed SFP requirements as proposed in § 488.1130.** CMS stated that it “intends to review public comments received and collaborate with hospice stakeholder to further develop the SFP.” CMS states that they “will begin working on a revised proposal and will seek additional collaboration with stakeholders to further develop the structure and methodology for implementing the SFP. Target date: Proposed rulemaking for FY 2024.

C. **New Subpart N – Enforcement Remedies for Hospice Programs with Deficiencies**

The enforcement remedies listed below give the Secretary additional options for enforcement to encourage poor-performing hospices to come into substantial compliance with CMS CoP requirements prior to CMS termination of the hospice’s provider agreement.

1. **General Provisions (§ 488.1210)**

- a. **Deemed status and condition-level findings:** As detailed in SOM Chapter 2, section 2005B, CMS may temporarily remove deemed status of an accredited hospice program due to condition-level findings found by the SA or Federal survey team during a complaint or validation survey. If the deficiencies remain uncorrected, oversight of that hospice program is transferred to CMS, through the SA, until the hospice program either demonstrates substantial compliance or CMS terminates its Medicare participation. An AO cannot recommend or implement enforcement remedies
- b. **Timeframes:**
 - 1. **POC:** The hospice program would be required to submit an acceptable POC to the SA or CMS within **10 calendar days** from receipt of the statement of deficiencies.
 - 2. **IJ:** For all remedies imposed, except for CMPs, when there is IJ the notice period is **at least 2 calendar days** before the effective date of the enforcement action.
 - 3. **No IJ:** **The notice period is at least 15 calendar days** before the effective date of the enforcement action. As discussed later in this section, CMS codified these proposals at § 488.1225(b) and 488.1230(b), respectively.
- c. **CMPs:** Once the administrative determination to impose the CMP is final, CMS would send a final notice to the hospice program with the amount of the penalty assessed, the total number of days of noncompliance (for CMPs imposed per day), the total amount due, the due date of the penalty, and the rate of interest to be charged on unpaid balances. § 488.1245(e).
- d. **Appeals:** CMS states that “a hospice program could appeal the determination of noncompliance leading to the imposition of a remedy under the provisions of 42 CFR part 498. A pending hearing would not delay the effective date of the remedy against the hospice program and remedies will be in effect regardless of any pending appeals proceedings. Civil money penalties would accrue during the pendency of an appeal but would not be collected until the administrative determination is final, as CMS notes in § 488.1245(f).”

2. **Factors to be Considered in Selecting Remedies (§ 488.1215)**

- a. **Timeframe for enforcement:** CMS will establish requirements for enforcement remedies that may be imposed when hospice programs are out of compliance with Federal requirements. At CMS’ discretion, these enforcement remedies can be imposed instead of, or in addition to, termination of the hospice program’s participation in the Medicare program, **for a period not to exceed 6 months.**

- b. **How remedy is chosen:** CMS would choose an enforcement remedy or termination based on the “impact on patient care and the seriousness of the hospice program’s patterns of noncompliance.”
- c. **Factors to be considered,** as outlined in § 488.1215:
 - The extent to which the deficiencies pose IJ to patient health and safety.
 - The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.
 - The presence of repeat deficiencies (defined as condition-level), the hospice program’s compliance history in general, and specifically concerning the cited deficiencies, and any history of repeat deficiencies at any of the hospice program’s additional locations.
 - The extent to which the deficiencies are directly related to a failure to provide quality patient care.
 - The extent to which the hospice program is part of a larger organization with documented performance problems.
 - Whether the deficiencies indicate a system-wide failure of providing quality
- d. **Guidance to CMS Locations:** CMS will provide training to CMS Locations (formerly CMS Regional Offices) and SA staff on when remedies should be applied and develop processes to ensure these remedies are consistently applied. The guidance and training will be made publicly available.

3. Available Remedies (§ 488.1220)

- (1) CMPs in an amount not to exceed \$10,000 for each day of noncompliance by a hospice program
- (2) suspension of all or part of payments
- (3) appointment of temporary management to oversee the operation of the hospice program while improvements are made to bring the program into compliance with all such requirements.

In addition to those specified in the statute, CMS added:

- (4) a directed POC and
- (5) directed in-service training

4. Action when Deficiencies Pose Immediate Jeopardy (§ 488.1225) and Termination (§ 489.53)

- a. **Immediate action:** For situations involving IJ, if CMS determines, based on a standard survey or otherwise, that a hospice program’s deficiencies involve IJ to the health and safety of the individuals to whom the program furnishes items and services, it shall take immediate action to ensure the removal of the IJ and to correct the deficiencies or terminate the certification of the program.
- b. **Timeline for termination:** If the IJ situation is **not addressed and resolved within 23 days from the last day of the survey because the hospice program is unable or unwilling to correct the deficiencies, CMS will terminate the hospice program’s provider agreement.** In addition, CMS could impose one or more enforcement remedies including a CMP, temporary management, and/or suspension of Medicare payments before the effective date of termination.
- c. **Advance notice:** For a deficiency or deficiencies that pose IJ, CMS would provide the hospice program with **at least 2 days advance notice of any proposed remedies,** except

CMPs. Providers are informed of any IJ findings upon discovery of the IJ situation during the survey or as part of the exit conference at the end of the survey. This would give a hospice program time to remove the IJ and correct the deficiencies that gave rise to the IJ finding. To assure a hospice program achieves prompt compliance, CMS expects to give hospice programs written notice of an impending enforcement actions against them as quickly as possible following the completion of a survey of any kind.

- d. Notice of termination:** CMS will give notice of termination to the hospice program **within 2 days** before the effective date of the termination. CMS also confirms that the hospice program's provider agreement would be terminated if the hospice failed to correct a deficiency or deficiencies within the required time frame.
- e. Transferring patients upon termination:** The regulations require a hospice program whose provider agreement is terminated to appropriately and safely transfer its patients to another local hospice program **within 30 days of termination**, unless a patient or caregiver chooses to remain with the hospice program as a self-pay or with another form of insurance (for example, private insurance).

5. Action when Deficiencies are at the Condition-level but do not Pose Immediate Jeopardy (§ 488.1230)

- a. Maximum period for enforcement remedies:** Enforcement remedies cannot continue for a period that exceeds 6 months. Enforcement remedies would remain in effect until the hospice program achieves compliance or has its Medicare participation terminated.
- b. Advance notice for non-IJ:** CMS will provide the hospice program at **least 15 calendar days advance notice** of any proposed remedies, except for CMPs.

6. Temporary Management (§ 488.1235)

- a. Definition:** "temporary management" means the temporary appointment by us or an authorized agent, of a substitute manager or administrator, who would be under the direction of the hospice program's governing body and who would have authority to hire, terminate or reassign staff, obligate hospice program funds, alter hospice program procedures, and manage the hospice program to correct deficiencies identified in the hospice program's operation. The substitute manager or administrator would be appointed based on qualifications described in §§ 418.100 and 418.114 and would be under the direction of the hospice program's governing body.
- b. When imposed:** Temporary management is imposed when a hospice program is determined to have condition-level deficiencies and the deficiencies or the management limitations of the hospice program are likely to impair the hospice program's ability to correct the deficiencies and return the hospice program to compliance with all of the CoPs within the required 6 month timeframe.
- c. Termination of the hospice program's provider agreement:** The hospice's provider agreement would be terminated if:
 - the hospice program refuses to relinquish authority and control to the temporary manager.
 - a temporary manager was appointed, but the hospice program failed to correct the condition-level deficiencies within 6 months from the last day of the survey.
 - If the hospice program resumes management control without CMS's approval, additional enforcement remedies could be imposed.

d. Temporary management would end when:

- CMS determines that the hospice program has achieved substantial compliance and has the management capability to remain in compliance;
- The hospice program provider agreement is terminated; or
- The hospice program resumes management control without CMS approval.

e. Maximum timeframe for temporary management: For a period not to exceed 6 months from the date of the survey identifying noncompliance.

f. Financial arrangements for temporary manager: Required to be provided at the hospice program's expense. The hospice program must agree to:

- Pay his/her salary directly for the duration of the appointment.
- Temporary outside management, which might be necessary to bring the hospice program back into compliance.
- Set the salary for the temporary manager not less than the amount equivalent to the prevailing salary paid by providers in the geographic area for positions of this type.

g. Internal or External to the Organization: CMS stated that temporary manager must have the experience and education that qualifies the individual to oversee the hospice program. CMS states that "the temporary manager can be either internal or external to the hospice program and will be approved and appointed by CMS or the SA based on qualifications described in §§ 418.100 and 418.114. The temporary manager would be under the direction of the hospice program's governing body."

7. Suspension of Payment for all New Patient Admissions (§ 488.1240)

- a. Suspension of payments limitation:** Many commenters provided suggestions about limiting the suspension of payments to only new patient admissions. CMS states that they "have considered the commenters' suggestions and agree that limiting the payment suspension to all new patient admissions would help avoid disproportionate financial burdens on hospice programs. In addition, for poor performing hospice programs, CMS continues to have the option to terminate."
- b. Maximum timeframe:** For a period not to exceed 6 months and would end when the hospice program had achieved substantial compliance or was terminated.
- c. Advance Notice:** CMS would provide written notice of the intent to impose a payment suspension **remedy at least 2 calendar days before the effective date of the remedy in IJ situations or 15 calendar days before the effective date of the remedy in non-IJ situations.**

8. Civil Monetary Penalties (CMPs) (§ 488.1245)

CMS is authorized to impose a CMP against a hospice program that is determined to be out of compliance with one or more CoPs, regardless of whether the hospice program's deficiencies pose IJ to patient health and safety. CMS could also impose a CMP for the number of days of IJ. The CMP amount cannot exceed \$10,000 for each day of noncompliance.

- a. Per day CMP:** The per day CMPs would be imposed for each day of noncompliance with the CoPs. Additionally, should a survey identify a particular instance or instances of noncompliance during a survey, CMS will impose a CMP for that instance or those individual instances of noncompliance.
- b. Per instance CMP:** At § 488.1205, "*Per instance*" means a single event of noncompliance identified and corrected during a survey, for which the statute authorizes CMS to impose a

remedy. For penalties imposed per instance of noncompliance, CMS confirms that penalties will range from \$1,000 to \$10,000 per instance. Such penalties would be assessed for one or more singular events of condition-level noncompliance that were identified at the survey and where the noncompliance was corrected during the onsite survey.

- c. Factors to consider when determining the CMP amount:** CMS will consider the following when determining the CMP amount:
- The size of the hospice program and its resources.
 - Evidence that the hospice program has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the CoPs and to ensure patient health and safety.
- d. When several instances of noncompliance are identified at a survey:** More than one per-day or per instance CMP could be imposed as long as the total CMP did not exceed \$10,000 per day. In addition, a per-day and a per-instance CMP would not be imposed simultaneously for the same deficiency in conjunction with a survey.

Three tier system to establish amount of hospice CMP:

CMP Range	Description of Hospice Deficiency	Hospice Civil Monetary Penalty
Upper range	For deficiency that poses IJ to patient health and safety	\$8,500 to \$10,000 per day of condition level non-compliance
Middle range	For repeat and/or a condition-level deficiency that did not pose IJ but is directly related to poor quality patient care outcomes	\$1,500 to \$8,500 per day of noncompliance with the CoPs
Lower range	For repeated and/or condition-level deficiencies that did not constitute IJ and were deficiencies in structures or processes that did not directly relate to poor quality patient care	\$500 to \$4,000 per day of noncompliance

- e. Decreasing CMP penalty amount:** CMS could decrease the CMP penalty amount from the upper to the middle or lower range if a condition-level deficiency exists and the hospice program shows an earnest effort to correct systemic causes of the deficiencies and sustain improvement.
- f. Factoring in the size of the hospice and its resources:** CMS states that they will factor in the size of the hospice program and its resources when considering the amount of the CMP. CMPs may also be adjusted based on revisit survey findings and after a review of the provider’s attempted correction of deficiencies. CMS may also impose more severe penalties for repeated noncompliance with the same condition-level deficiency or uncorrected deficiencies from a prior survey.

- g. Notification of imposition of CMS:** If CMS imposes a CMP, the hospice program would receive written notification of the intent to impose it, including the amount of the CMP being imposed and the proposed effective date of the sanction. Once the administrative determination is final, CMS will send a final notice to the hospice program with the amount of the penalty that was assessed; the total number of days of noncompliance (for per day CMPs); the total amount due; the due date of the penalty; and the rate of interest to be charged on unpaid balances.
- h. Actions by hospice after notice of intent is received from CMS:** Once the hospice program has received the notice of intent to impose the CMP, it has 60 calendar days from the receipt of the written notice of intent to either:
- request an administrative hearing in accordance with § 498.40 or
 - to provide notice to CMS of its intent to waive its right to an administrative hearing.
- i. Reduction in CMP amount:** If the hospice program provides notice to CMS of its intent to waive its right to an administrative hearing, in accordance with the procedures specified in proposed § 488.1245(c)(2), the program will receive a 35 percent reduction in the CMP amount.
- j. Deadline for CMP payment:** The CMP would be due within 15 calendar days of hospice programs' written request for waiver. If the hospice program did not respond to the notice of intent to impose a CMP within 60 calendar days of receipt, it would waive its right to a hearing. In such cases, the CMP would not be reduced by 35 percent because a hospice program must follow the procedures specified at proposed § 488.1245(c)(2) to receive the reduction.
- k. Involuntary termination:** When a CMP has been imposed and the payment was still due for a program being involuntarily terminated, CMS would include the final notice, also known as a due and payable notice, as part of the termination notice.
- l. Timeframes for CMP:** A CMP would become due and payable **15 calendar days** from:
- The time to appeal had expired without the hospice program appealing its initial determination;
 - The date CMS received a request from the hospice program waiving its right to appeal the initial determination;
 - A final decision of an Administrative Law Judge or Appellate Board of the Departmental Appeals Board upheld CMS's determinations; or
 - The hospice program was terminated from the program and no appeal request was received.
- m. Request for hearing:** A request for a hearing would not delay the imposition of the CMP but would only affect the collection of any final amounts due to CMS.
- n. Final decisions about remedies:** CMS stated that "all final decisions regarding whether or not to impose a remedy and what type of remedy to be imposed will be made by the applicable CMS Location (formerly CMS Regional Office)."
- o. CMP funds collected:** Any funds collected due to CMPs imposed on a hospice will be distributed to the State Medicaid Agency and to the US Treasury. The CAA 2021 included a provision that allows the Secretary to use a portion of CMPs collected "to support activities that benefit individuals receiving hospice care, including education and training programs to ensure hospice program compliance." CMS stated that they will consider hospice improvement activities in the future and will develop additional guidance as needed.

9. Directed Plan of Correction (§ 488.1250)

- a. **Development of a directed Plan of Correction:** CMS may impose a directed plan of correction (POC) for a hospice that is out of compliance with the CoPs. The directed POC would be developed by CMS or by the temporary manager, with CMS approval. The directed POC would set forth the outcomes to be achieved, the corrective action necessary to achieve these outcomes, and the specific date the hospice program would be expected to achieve such outcomes.
- b. **Failure to achieve compliance:** If the hospice program failed to achieve compliance within the timeframes specified in the directed POC, CMS could impose one or more additional enforcement remedies until the hospice program achieved compliance or was terminated from the Medicare program.

10. Directed In-Service Training (§ 488.1255)

- a. **When is directed in-service training used:** Directed in-service training would be required where staff performance resulted in noncompliance and it was determined that a directed in-service training program would correct this deficient practice through retraining the staff in the use of clinically and professionally sound methods to produce quality outcomes.
- b. **Who can provide in-service training programs:** Hospice programs may use in-service programs conducted by instructors with an in-depth knowledge of the area(s) that would require specific training so that positive changes would be achieved and maintained. Hospice programs would be required to participate in programs developed by well-established education and training services. These programs would include, but not be limited to, schools of medicine or nursing, area health education centers, and centers for aging. CMS would only recommend possible training locations to a hospice program and not require that the hospice program utilize a specific school/center/provider.
- c. **When substantial compliance is not achieved:** If the hospice program did not achieve substantial compliance after such training, CMS could impose one or more additional remedies.

11. Continuation of Payments to a Hospice program with Deficiencies (§ 488.1260)

- a. **Criteria for continuation of Medicare payments:** Medicare payments would continue for 6 months if –
 - An enforcement remedy or remedies (with the exception of suspension of all payments) have been imposed on the hospice program and termination has not been imposed;
 - The hospice program has submitted a POC which has been approved by CMS; and
 - The hospice program agrees to repay the Federal Government the payments received under this arrangement should the hospice program fail to take the corrective action as outlined in its approved POC in accordance with the approved plan and timetable for corrective action.
- b. **Requirements not met:** If any of these three requirements are not met, a hospice program would not receive any Federal payments from the time that deficiencies were initially identified. We would also terminate the agreement before the end of the 6-month correction period.

12. Termination of Provider Agreement (§ 488.1265)

- a. **A provider agreement would be terminated if:**

- (1) the hospice program failed to correct condition-level deficiencies within 6 months unless the deficiencies constitute IJ
 - (2) the hospice program failed to submit an acceptable POC
 - (3) the hospice program failed to relinquish control of the temporary manager (if that remedy is imposed); or
 - (4) the hospice program failed to meet the eligibility criteria for continuation of payments.
- b. Timeframe for payments to be available:** Payment is available for up to 30 days after the effective date of termination for hospice care furnished under a plan established before the effective date of termination.

As part of its regularly scheduled webinar series, the NHPCO webinar scheduled for **Thursday, November 18, 2021**, from 2:00 – 3:00 p.m. EST will focus on the details of the CY 2022 Home Health rule -- Survey and Enforcement Requirements for Hospices. If providers are already registered for the monthly webinar series or have this webinar included in a 2021 webinar package, no additional registration is needed. If providers are not already registered for the webinar series, [online registration is available](#). (New registrations for this webinar must be completed by 11/15/2021; there is a low webinar registration fee.)

After reviewing the full regulatory alert, NHPCO members with questions should email regulatory@nhpc.org with “Home Health Final Rule” in the subject line.

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*As the upcoming November 18 webinar demonstrates,
there is value in registering for an NHPCO [2022 webinar package](#).*

