



National Hospice and Palliative Care Organization Policy Alert

NHPCO is Supportive of Policies in Bipartisan Legislation to Enhance Oversight of Hospice Care

TO: NHPCO Provider Members
FROM: NHPCO Policy Team
DATE: November 8, 2019

Summary

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*, specifically written to address the concerns identified by the HHS Office of Inspector General about hospice survey deficiencies and patient harm. NHPCO supports many of the policies in the bill as it closely tracks NHPCO's recommended Hospice Program Integrity Initiatives. Thank you to the Legislative, Regulatory, and Quality Committees for their work on vetting and approving many of the program integrity measures that were included in this legislation. NHPCO will continue to engage with the sponsors of the legislation and hope to further refine the legislation to include enhanced access to hospice.

OIG Reports and 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.

NHPCO staff immediately began dialogue with the relevant Congressional committee staff – on the House side, the House Ways and Means Committee and on the Senate side, the Senate Finance Committee. The “do something” discussion evolved into creating a hospice program integrity bill that would address some of the issues identified for CMS by the OIG. Discussions with both the OIG and CMS identified 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 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. NHPCO staff shared the Program Integrity Initiative document in discussions with legislative champions and the Administration to craft draft legislation that would balance the need for smart, targeted oversight and education without imposing excessive regulatory burden.

Alternative sanctions: Discussions with both OIG and Congress centered around their desire to identify alternative sanctions for hospice, named as an issue by the OIG. Alternative sanctions for hospice are not currently available and must be authorized in statute for CMS to take any action for a hospice provider's deficiencies, short of decertification. The alternative sanctions listed in the bill mirror those for home health, without the additional civil monetary penalties sanction. The most serious of the alternative sanctions, partial or full suspension of payments for all new admissions, is a very serious alternative sanction and could be used when the survey deficiencies identified have implications for significant patient harm. There is a provision in the bill, however, that gives the Secretary discretion to add other alternative sanctions. The addition of alternative sanctions gives CMS and surveyors options to use in correcting survey deficiencies short of decertification. More detail on the specific alternative sanctions can be found on page 4 of this Alert or on page 3, Section 3 of the bill ([S. 2807](#)).

Provisions of the Bill

The *Hospice Care Improvement Act of 2019* includes provisions that aim to increase reported hospice data, improve the hospice survey process and increase compliance of quality standards for hospice care. Details about the bill follow.

1. BILL TITLE: HOSPICE CARE IMPROVEMENT ACT OF 2019 (S. 2807)

2. IMPROVING QUALITY REPORTING AND TRANSPARENCY FOR HOSPICE CARE

A. Increasing Reported Hospice Data

- For surveys conducted on or after the date enactment of the Act, The Secretary of Health and Human Services ("the Secretary") is authorized to disclose accreditation surveys to the same extent as they're currently authorized with respect to home health agency accreditation surveys.

- Not later than 6 months after the date of the enactment, the Secretary shall expand the information that approved accreditation agencies are required to report. Approved accreditation agencies will be required to publicly report hospice survey deficiencies so that they are comparable to the information that State and local survey agencies report.
- Not later than 6 months after the date of enactment, data from both State survey agency and accrediting organization survey results shall be included in Hospice Compare.
- In determining what information should be included in Hospice Compare, the Secretary should consult with:
 - employees of hospice programs and their representatives;
 - provider stakeholder groups;
 - accreditation organizations;
 - State and local survey agencies;
 - caregivers of current or former hospice patients;
 - any other representatives of programs or groups the Secretary determines appropriate.

B. Improving the Hospice Survey Process

- **Surveys every 36 months:** This bill eliminates the 2025 “sunset provision” for the frequency of hospice surveys and makes permanent the requirement for hospice surveys every 36 months.
- **Newly certified hospices:** After the date of enactment, any newly-certified hospice program is subject to a standard survey within 12 months of initial certification.
- **Hospices with alternative sanctions – survey frequency and compliance:** Any hospice subject to an alternative sanction (addressed below) shall have a standard survey no less frequently than once every 12 months until the entity is found by the State or local survey agency or approved accreditation agency to be in compliance with survey requirements for a period of **24 months**.
- **Requirements for surveyors to provide educational information to hospice providers on survey deficiencies and preventing future deficiencies:** If a deficiency is found as part of a standard survey, the State or local survey agency or an approved accreditation agency shall notify the organization of the finding and provide educational information, or access to such information, on how to address the deficiency and prevent future deficiencies. The information shall be standardized for both educating hospice programs and surveyors from State survey agencies and approved accreditation agencies.

- **Joint training and education:** The Secretary will establish a process for joint training and education of surveyors from State and local survey agencies, approved accreditation agencies and hospice providers on a regular basis. The education and training will cover changes to regulations, guidelines and policies governing hospice operations as they are implemented and used in the survey process.

C. Annual Report of Deficiencies

- The Secretary will conduct an annual study of hospice deficiencies, including an analysis of ways to address deficiencies. A report on the study, and recommendations for legislation or administrative action, shall be submitted to Congress no later than January 1, 2021.

3. INCREASING COMPLIANCE OF QUALITY STANDARDS FOR HOSPICE CARE

A. Increasing Payment Reductions for Failing To Report Quality Measures

- The bill proposes to increase from 2% to 4% the percentage of payment reduction when a hospice provider does not participate in quality reporting, beginning in FY2021 and thereafter.

B. Authority To Impose Alternative Sanctions

- Beginning 1 year after the date of enactment, the Secretary shall issue guidance on the process for imposing alternative sanctions on hospice providers.
- **Alternative sanctions:** The bill lists four alternative sanctions that may be imposed but leaves the Secretary with discretion to add others. Alternative sanctions include:
 - **Suspension of all or part of the payments** to which a hospice program would otherwise be entitled for all new admissions on or after the date on which the Secretary determines that alternative sanctions should be imposed.
 - The **appointment of temporary management** to oversee the operation of the hospice program and to protect and assure the health and safety of individuals under the care of the hospice program while improvements are made in order to bring the hospice program into compliance with all the requirements specified in this section.
 - **Implementation of a directed plan of correction** under which the Secretary or the temporary manager may direct the hospice program to take specific corrective action to achieve specific outcomes within specific timeframes.
 - If the Secretary determines that education is likely to correct the deficiencies, imposition of a requirement that all hospice program staff attend **in-service training programs deemed acceptable by the Secretary**.

NHPCO remains concerned about the title of the bill and would like to see a reference to smart and effective oversight of hospice programs. Another concern is that this legislation does not incorporate the provisions of the *Rural Access to Hospice Act* (H.R.2594/S.1190) which is an important statutory fix for the barrier Medicare beneficiaries face when they are served by a Rural Health Clinic (RHC) or Federally Qualified Health Center (FQHC). NHPCO will continue to advocate for the inclusion of the Rural Access to Hospice Act in any program integrity packages that may be under consideration.

NHPCO looks forward to working with our legislative champions in the Senate to shepherd this bill through the legislative process and will continue to engage with our House champions on a companion bill. NHPCO thanks the many members who reached out, engaged, participated in focus groups, conferred in committees, and contacted their Members of Congress to make this bill a reality. We look forward to continued grassroots engagement and appreciate your ongoing commitment to high-quality, person-centered care for all Americans.

The text of the bill, S 2807 is [here](#). At the moment, no grassroots advocacy is needed, but watch for additional communication about this bill in the coming days.

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

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