



Center for Clinical Standards and Quality

Ref: QSO-25-06-Hospice

DATE: November 13, 2024

TO: State Survey Agency Directors

FROM: Directors, Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)

SUBJECT: Ensuring Consistency in the Hospice Survey Process to Identify Quality of Care Concerns and Potential Fraud Referrals

Memorandum Summary

While the primary purpose of CMS' health and safety surveys is to determine compliance with the Medicare Hospice CoPs, there are several elements of the survey process that can uncover concerns that may necessitate a referral to CMS for potential fraud.

It is important that all elements of the survey process, and especially those listed below, be consistently performed to safeguard hospice patients and ensure the integrity of Medicare funding for hospice care.

Background:

CMS oversees the quality of care provided by hospices through health and safety surveys performed by state survey agencies (SAs) and Accrediting Organizations (AOs). These organizations ensure hospices meet all Medicare conditions of participation (CoPs). Hospice surveys are performed prior to their initial certification for Medicare participation and recertification surveys continue every three years, thereafter. In addition, patients, caregivers, and others may file complaints against hospice providers at any time, which can lead to additional surveys to address health, safety, or quality of care concerns.

In addition to its oversight of hospice health and safety, CMS also ensures Medicare program integrity through enrollment oversight, identification of fraudulent providers, and minimizing fraudulent activity to mitigate potential adverse impacts to patients receiving hospice services reimbursed by Medicare.

Discussion:

This memorandum is intended to reinforce existing tools to identify when a hospice provider's non-compliance with the CoPs puts the health and well-being of patients at risk and could be an indicator of the need for a fraud referral.

While this memo focuses on federal survey processes and enforcement, we also seek to highlight independent state licensure authority that may similarly stop and/or mitigate the impact of potential fraudulent practices on patient health and safety. Some states have implemented licensure processes for hospice providers to protect state programs and patients from fraudulent or abusive behavior, including:

- 60-month bans on new hospice licensures in some states;
- Requiring in-person meetings with the state licensure agency prior to enrollment;
- Posting direct consumer messaging to inform state residents how to identify potential hospice fraud; and
- Certificate of Need requirements to receive state licensure.

1. Hospice Basic Training and Survey Protocol

The survey protocol directs surveyors to consistently gather and review information to determine that hospices are appropriately following regulatory requirements to ensure the health and safety of patients receiving care. Survey outcomes determine whether a hospice may be certified, recertified, or terminated.

a. Surveyor Training

CMS has provided a common platform for basic training to ensure consistent surveyor competencies in the SAs and AOs. Surveyors (both SA and AO) are required to complete the Hospice Basic Surveyor Training and supervised field experience prior to serving on a hospice survey team.

b. Surveyor Skills Review

Additionally, CMS has annual Surveyor Skills Review (SSR) training for the SA surveyors that focuses on areas identified for enhanced training or to improve accuracy and consistency in the survey process.

c. The Survey Process

The Medicare Conditions of Participation (CoPs) provide minimal standards of care to ensure patient safety and quality of care. Surveys are the “yardstick” by which CMS determines provider compliance with these minimal standards of care.

Through the survey process, CMS provides oversight to ensure compliance with the CoPs, including taking enforcement actions to compel compliance. Both SAs and AOs must maintain adequate documentation (patient lists, surveyor notes, etc.) to support findings of non-compliance reported on the CMS 2567 – Statement of Deficiencies.

d. Observations

- i.** Home visits—Surveyors should observe patient surroundings and interactions with hospice staff and caregivers to identify potential lack of care and support, as well as determining the degree of patient inclusion in decisions about their care. A patient-centered approach helps to avoid abuse. Surveyors should determine whether the patient chose to receive hospice services, whether care is based on patient preferences and needs, whether the unit of care is the patient *and* family, and whether that care incorporates the multidisciplinary plan of care.
- ii.** Interdisciplinary Group (IDG) meetings (if possible, during survey)—Inclusion of the multidisciplinary team ensures that hospice care involves all aspects of the patient’s and family’s experience so as not to miss opportunities to ensure that all needs and preferences are addressed fully and to ensure that the comprehensive care plan is established and adhered to according to patients’ expressed preferences.
- iii.** Multiple Locations—Surveyors must ensure that all locations are equipped to provide comprehensive services as fully as the hospice main location. Services should not be curtailed due to staffing shortages, lack of supplies, or inability to provide any service the hospice presents as part of its program.
- iv.** Ensure survey oversight for the ability to provide all four levels of care, including general inpatient care and respite contracts, routine home care, as well as the provision of continuous home care.
- v.** Access to care is available at all hours and on all days (including after hours, weekends and holidays).

e. Interviews

Specific survey practices provide opportunity for engagement with staff and patients about the quality and appropriateness of care:

- i.** Confidential interviews of key personnel (medical director, nursing director, volunteer coordinator, and staff) provide an opportunity for the surveyor to hear direct feedback.
- ii.** Confidential interviews with patients and family/caregivers (without hospice staff) provide an opportunity to talk directly to patients and families about their concerns that might not otherwise be identified through record reviews.
 - o** These interviews can confirm the patient’s rights related to shared decision-making and patient preferences as well as their eligibility and patient-initiated election of hospice.
- iii.** Ensure availability of translation services for non-English speaking patients during patient interviews.
- iv.** Use of interviews to confirm findings from observations and record reviews.

f. Record Reviews:

- i.** Verify that the hospice is tracking complaints received by patients or patients’ families for the previous 12 months from receipt of complaint through resolution.

- ii. Verify use of an individualized plan of care to ensure patients do not receive care that may not meet their specific needs or that is not implemented to achieve desired outcomes for symptom management.
- iii. Review the timeliness of care (nursing visit every 14 days, durable medical equipment (DME) acquisition, symptom management, etc.) to ensure quality of life.
- iv. If an IDG meeting is not scheduled during the survey, review the minutes from the most recent meeting.
- v. Verify the patient and caregiver were informed about the scope of services that the hospice identified on the election statement.

g. Hospice Administrative Oversight

- i. Quality Assessment and Performance Improvement (QAPI) program—The hospice must have a QAPI program that is hospice-wide and includes all services offered by the hospice. This is especially important regarding review of adverse events reports and how they are addressed by the QAPI process. Surveyors must ensure that the QAPI program is hospice-wide, i.e., “reflects the complexity of its organization and services; involves all hospice services (including those services furnished under contract or arrangement); focuses on indicators related to improved palliative outcomes; and takes actions to demonstrate improvement in hospice performance.”
- ii. Functioning Governing Body—The hospice governing body has full legal authority and responsibility for the management of the hospice, the provision of all hospice services, its fiscal operations, and continuous quality assessment and performance improvement. The governing body must oversee the QAPI program and analysis of adverse events, as well as hiring and managing key administrators.
- iii. CMS Hospice Forms—Unapproved changes in ownership and location are often associated with fraud. It is essential that surveyors review documents or information, such as the CMS Form 855-Medicare Enrollment application (identifies key managers, services and location) and other survey forms such as the CMS 417- Hospice Request for Certification in Medicare, and CMS 643- Hospice Survey and Deficiencies Report. Collectively, these forms provide essential information about the hospice’s operation that can confirm they are conducting business, as approved.
- iv. Medical Director Role and Responsibilities—Ensure that there is a single individual identified as the medical director and documentation of their full involvement (oversight of IDG, certification and re-certification of terminal illness, etc.). This role is pivotal in overall hospice operations and delivery of high-quality and safe care. Surveyors should also review other professional staff credentials, such as registered nurse licensure and use of master’s prepared social workers.

2. Abbreviated Surveys

CMS may conduct focused abbreviated surveys (i.e., complaint, post-survey revisit, Changes of Ownership (CHOW), and validation surveys) when specific concerns are identified. The findings

from these surveys can be used to determine a hospice's compliance with the CoPs and may trigger a fraud referral, if warranted.

3. Enforcement Action

In accordance with 42 CFR 489.53, CMS has the authority to terminate hospice providers that do not meet the Medicare CoPs. In October 2021, CMS was given authority to impose additional enforcement remedies on hospices determined to be non-compliant with the Medicare CoPs.

These enforcement remedies include:

- Suspension of payment for new admissions;
- Civil monetary penalties;
- Temporary management of the hospice program;
- Directed in-service training; and
- Directed plan of correction.

These enforcement remedies can mitigate the potential harm of non-compliance and compel more rapid correction of the deficiencies. SAs are encouraged to identify and recommend imposition of enforcement remedies. The CMS location may, after reviewing the AO's survey findings and related information, authorize the SA to conduct a focused validation survey to determine whether condition-level deficiencies, cited by the AO, have been corrected. If deemed status is withdrawn and/or the hospice program is placed under the jurisdiction of the SA, as may occur following a complaint investigation by the SA, the CMS Location may impose enforcement remedies on the hospice program per the usual procedures.

4. Reporting Potential Fraud

If evidence or concern of potential fraud is identified during a survey, a referral should be made to CMS by via the CMS Location or AO (using a comparable process).

Conclusion:

While the primary purpose of SA and AO surveys is to determine compliance with the Medicare Hospice CoPs, there are several elements of the survey process that can uncover concerns that would necessitate a referral to CMS for potential fraud.

Contact:

For questions or concerns relating to this memorandum, please contact QSOG_Hospice@cms.hhs.gov.

Effective Date:

Immediately. Please communicate to all appropriate staff within 30 days.

/s/

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Resources to Improve Quality of Care:

Check out CMS's new Quality in Focus interactive video series. The series of 10–15 minute videos are tailored to provider types and aim to reduce the deficiencies most commonly cited during the CMS survey process, like infection control and accident prevention. Reducing these common deficiencies increases the quality of care for people with Medicare and Medicaid.

Learn to:

- *Understand surveyor evaluation criteria*
- *Recognize deficiencies*
- *Incorporate solutions into your facility's standards of care*

See the [Quality, Safety, & Education Portal Training Catalog](#), and select Quality in Focus

Get guidance memos issued by the Quality, Safety and Oversight Group by going to [CMS.gov](#) [page](#) and entering your email to sign up. Check the box next to “CCSQ Policy, Administrative, and Safety Special Alert Memorandums” to be notified when we release a memo.