Hospice Program Integrity Ideas

Submitted by LeadingAge, National Association for Home Care and Hospice, National Hospice and Palliative Care Organization, and National Partnership for Healthcare and Hospice Innovation
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PROGRAM INTEGRITY IDEA	WHAT PROBLEM DOES THIS IDEA ADDRESS?	NEW PROVIDERS	EXISTING PROVIDERS	NOTES
LIMITING ENROLLMENT OF NEW PROVIDERS				
1. Targeted moratorium on new hospices: Use existing CMS moratorium authority to limit enrollment of new hospice providers in counties with highest concentration in enrollment in the impacted states where the numbers of providers exceed the level appropriate to ensure access, quality, and choice. Allow for appropriate exceptions. • **Service area:** Address service area concerns; include surrounding counties, not just county where hospice is based.	Inappropriate and/or unnecessary growth of hospices.	X		<u>CMS has existing authority</u> Look to CMS' Medicare Home Health (HH) moratoria for details on how to potentially implement for hospice. Example includes criteria for targeting certain areas (i.e. number of providers per 10,000 Medicare Fee-for-Service (FFS) beneficiaries; compounded annual growth rate in provider enrollments; ''churn rate''—the rate of providers entering and exiting the program—as measured by the percent of the target provider or supplier community continuously receiving Medicare payments; Average amount spent per beneficiary who used services furnished by the targeted provider type).
ENFORCEMENT AGAINST NON-OPERATIONAL HOSPICES				
2. Revocation of Medicare enrollment: Can be accomplished without the involvement of state survey agencies. This proposal may involve CMS flagging providers as potentially non-operational based on aberrant gaps in Medicare billing. Revoking enrollment of non-operational hospices prevents them from being sold to inexperienced providers for a profit.	Proliferation of hospices that exist primarily to be sold.	X	X	<u>CMS has existing authority</u>
3. Organizational Deactivation: Revoke Medicare certification if provider has not billed any claims in specified timeframe (consider 12 months without billing).	Proliferation of hospices that exist primarily to be sold.		X	<u>CMS has existing authority</u> May need additional guidance/resources to focus attention on states/counties with troubling patterns (e.g. CA, TX, NV, AZ) As an alternative to not billing within 12 months, consider revocation based on not filing any Notices of Election (NOEs) within 6 months (this may be a quicker way to ID non-operational hospices than looking at billing claims)

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4. Increased site visits for hospices suspected of being non-operational: CMS may direct its Site Visit Contractors ("SVCs") to perform increased site visits of those hospice providers flagged as potentially non-operational, and to proceed with revocation if indeed they are not operational.	Proliferation of hospices that exist primarily to be sold.	X	X	CMS has existing authority
MEDICARE CERTIFICATION				
5. Develop hospice "*red flag*" list criteria: Initial Medicare certification application "triggers" related to specific areas of concern. CMS must take additional steps to investigate further **before** certification or revalidation approved. Potential "red flags" include: a. Co-location of multiple hospices at single address b. Hospice administrator overseeing multiple hospices c. Other hospice leadership staff or patient care manager serving multiple hospices d. If hospice company appears to be hidden behind a shell company.	Proliferation of hospices that exist primarily to be sold.	X	X With modification – applicable to revalidation	Uncertain if CMS has existing authority
6. Put certain new hospices into "high risk" survey category: Based on developed "red flag" criteria, elevate targeted new hospices to a "high risk" category for surveys ("enhanced scrutiny").	Proliferation of hospices that exist primarily to be sold.	X	X With modification – applicable to revalidation	CMS has existing authority
7. Prohibit individuals with convictions for certain crimes from serving as hospice administrators or owners: Prohibit individuals with convictions for certain kinds of crimes from serving as hospice administrators (e.g. financial crimes).	Unqualified and/or risky hospice leadership that could contribute to program integrity or quality-of-care issues	X	X	Uncertain if CMS has existing authority Some state licensure regulations already have these kinds of requirements.
8. Ask CMS to implement changes in 2019 final Medicare Provider Enrollment rule.	Inappropriate and/or unnecessary growth of hospices. Unqualified and/or risky hospice leadership that could contribute to program integrity or quality-of-care issues	X	X	CMS has existing authority
9. Ownership disclosure: If the company is not publicly traded, require disclosure of ownership and control, major investors over a certain threshold.	Lack of transparency makes accountability for	X	X Upon revalidation	CMS has existing authority May be part of revised CMS 855-A enrollment changes forthcoming

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a. Require that the CMS Certification Numbers (CCNs) of subsidiaries to a parent organization number be clearly denoted as related to the umbrella agency in a manner that is accessible to consumers. b. Require CMS to reevaluate the methodology by which CCNs are assigned to hospice agencies to enable fair and equitable oversight.	poor performance difficult and makes it harder for patients/families to choose quality providers			
10. Ask OIG and/or GAO to study use of consulting entities' role in creation of Medicare hospice agencies and potential inappropriate practices by these entities.	Consultants that guarantee Medicare certification/use the "hospice in a box" Address concerns that some hospices pending certification use the same 5 patients concurrently to meet initial certification requirement	X	X	
11. "Drive-by" surveys to confirm operations: Implement mandatory, unannounced drive-by "check-ins"/survey requirements for all new providers to locate office, signage and confirm that the office and the business entity exist and meet standard requirements for an office location.	Proliferation of hospices that exist primarily to be sold.	X	X Upon revalidation	<u>CMS has existing authority</u>
12. Require a hospice agency to have specified personnel categories on a CCN application or revalidation and require the hospice agency to provide certain information for each individual for those positions.	Unqualified and/or risky hospice leadership that could contribute to program integrity or quality-of-care issues	X	X Upon revalidation	<u>Uncertain if CMS has existing authority</u>
RECOMMENDATIONS FOR NEW PROVIDERS				
13. Require new hospices to undergo more frequent surveys. • Once/year for first 3 years for new providers.	Ensuring new hospices are delivering high-quality care and meet health and	X	X With modification –	<u>CMS needs authority</u> Note that surveyors do not have the authority to determine if a provider is committing fraud – they only survey to the Conditions of Participation (CoPs).

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	safety requirements			
14. Increase scrutiny for initial patients: Increase the scrutiny for performing an initial Medicare enrollment survey to at least 5 authentic patients that are being provided hospice care, and surveyors connect with hospice patient or family.	Inappropriate and/or unnecessary growth of hospices. Address concerns that multiple hospices pending certification use the same 5 patients concurrently to meet initial certification requirement	X		CMS has existing authority
AGGRESSIVE OR INAPPROPRIATE MARKETING OR SOLICITATION				
15. Modify CoPs to include requirement for a policy on ethical marketing practices and include IG guidance for surveyors: Each hospice must develop a policy on ethical marketing practices that will be followed in all marketing materials. Policy must contain info on: a. Prohibition of kickbacks and inappropriate inducements for referrals (ex. bonuses for longer stay patients or those more likely to be longer stay) b. Disclosure about any incentive compensation arrangements for marketers. CoPs should include a list of mandatory items that must be included by hospice in their marketing materials, including explanation of the hospice election statement that includes: a. Clear explanation of waiver of curative care b. Clear explanation of requirement for 6-month prognosis **c.** Clear explanation that hospice services are of palliative and not considered curative.	Inappropriate marketing practices that may be misleading to patients/families	X	X	CMS has existing authority
16. CoPs should require that hospices explain, both verbally and in writing that is in language and a manner that is understandable to the patient and/or representative, that the Medicare Hospice Benefit entails: a. 6-month prognosis b. Palliative nature of MHB services c. Waiver of curative care coverage	Inappropriate marketing practices that may be misleading to patients/families	X	X	CMS has existing authority
HOSPICE QUALITY				

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17. Care Compare Website – Include the following additions: a. Date of hospice certification and/or change of ownership should be closer to the top of the listing and have a mechanism for regular and timely updates. b. Hospice Quality Reporting Program (HQRP): Show participation in HQRP (both Hospice Item Set [HIS] and Hospice Consumer Assessment of Healthcare Providers and Systems [CAHPS]). c. Indicate whether hospice was subject to payment penalty for non-participation in HQRP and the year of penalty. d. Identify which survey entity did the hospice's certification survey (state survey agency or accrediting organization). e. Information on contacting Medicare complaint hotline. f. Information on contacting a Quality Improvement Organization (QIO) with complaints or concerns. g. Make HCI Score more prominent/easy to find. h. Elevate placement of *Quality of Patient Care* data to below the *Family Caregiver Survey* rating on pages comparing multiple providers. i. Prioritize *Quality* on the menu bar of the individual hospice pages rather than *Conditions Treated*. j. If a hospice does not receive a star rating for their CAHPS survey, indicate on overview pages whether they have reviewable CAHPS data.	Difficult for consumers and families to easily access comprehensive information on hospice providers (including info relevant to program integrity concerns)	X	X	<u>CMS has existing authority</u> Making certain hospice survey results public is part of the mandated hospice survey reforms (guidance forthcoming) from the HOSPICE Act and included in the Consolidated Appropriations Act, 2021.
18. Medicare Handbook: Review annual Medicare handbook each year for the summary of program coverage requirements. Refer consumers to that handbook. Handbook currently does not contain program integrity alerts/red flags – consider adding this category to the hospice section of the Medicare handbook.	Difficult for consumers and families to easily access comprehensive information on hospice providers (including info relevant to program integrity concerns)	X	X	<u>CMS has existing authority</u>
19. Require states to improve access to hospice complaint hotlines: In keeping with the *HOSPICE Act,* which requires states to improve access to the complaint hotline in each state. Consider developing collateral materials that states and providers could use. In addition to its use by consumers, hospices could use hotline to report suspected fraudulent activity in the field.	Lack of clarity for consumers and families around how to report complaints about poor-quality care	X	X	<u>CMS has existing authority</u>
MEDICARE REGULATIONS AND SURVEYS				

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20. Require an onsite survey within one year when there is a change in ownership.	Proliferation of hospices that exist primarily to be sold		X	CMS has existing authority
21. Prohibit sale or transfer of hospice certification number for specified timeframe: a la home health's "36-month" Change in Ownership (CHOW) rule. (Allow appropriate exceptions as exist for HH).	Proliferation of hospices that exist primarily to be sold		X	CMS has existing authority – "hospice" needs to be added
22. Ensure survey oversight for ability to provide all 4 levels of care, including General Inpatient Care (GIP) and respite contracts, as well as provision of continuous home care (CHC) and afterhours care: CMS should direct survey oversight to ensure hospices have ability to/contracts in place to provide all 4 levels of care, including provision for afterhours care.	Large number of hospices not providing anything other than Routine Home Care (RHC) and/or concerns with (lack of) services provided after-hours	X	X	CMS has existing authority – this requirement is in statute Would take change in Appendix M: Guidance for Surveyors (Interpretive Guidance - IG) Surveyors already required to assess inpatient care provided directly and/or that a contract is in place and meets requirements to provide inpatient care (§418.108). Assessing for the ability to provide continuous care is not as clear. A revision to IG could remedy this. Surveyors already required to assess the provision of "after hours" care - §418.100(c)(2) requires 24/7 care for nursing, physician, drugs & biologicals, and other services as needed. The surveyor is also tasked with assessing for 24/7 care as part of "Information Gathering". A revision to the IGs could focus the surveyor specifically to assess for "after hours" care.
23. OIG Exclusionary list: Consider whether surveyors could check the OIG exclusionary list (LEIE) for key hospice personnel.	Individuals that should be barred from participating in Medicare programs are slipping through the cracks and continuing to play roles in hospice operations	X	X	CMS has existing authority May need change to IG to direct surveyors to check the list.

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24. Presence of corporate compliance plan: Require OIG to update the hospice corporate compliance recommendations/standards (published in 1999) and require all hospice organizations to have these plans in place to ensure adherence to applicable federal and state laws. Assessment of the presence of a plan that is consistent with OIG guidance should be made part of the CoPs and included in state survey operations manual and reviewed by surveyors, and hospices should be required to train key staff on the plan annually.	Hospices with poor program integrity practices	X	X	Plan updates from OIG CMS has existing authority to change CoPs (may require rulemaking)
OTHER SURVEY CONSIDERATIONS				
25. Hospice Special Focus Program: Clearly identify the role of the hospice special focus program in upcoming rulemaking. Include a provision for new hospices with condition level deficiencies.	Hospices with quality issues need additional education and oversight	X	X	CMS has existing authority Consider a reference to new hospices with condition level deficiencies in upcoming Special Focus Program rulemaking.
26. State Operations Manual- Appendix M Hospice Guidance for Surveyors: Before release of revised Appendix M and providing surveyor and provider training, ensure that changes to the interpretive guidelines for program integrity are included.	Hospices with quality issues need additional education and oversight	X	X	CMS has existing authority Changes in Appendix M to include program integrity provisions.
PERSONNEL REQUIREMENTS				
27. Administrator education and/or qualifications: Add administrator education and/or qualifications (ex. minimum number of years of experience) to CoPs. Required training/certification for hospice administrators.	Unqualified and/or risky hospice leadership that could contribute to program integrity or quality-of-care issues	X	X	CMS has existing authority Will take rulemaking
28. Patient care manager education and/or qualifications: Add education and/or qualifications (ex. minimum number of years of experience) to CoPs.	Unqualified and/or risky hospice leadership that could contribute to program integrity or quality-of-care issues	X	X	CMS has existing authority Note that there is language in the Home Health (HH) CoPs for this position Will take rulemaking
29. Background Checks: Require background checks on hospice agency owners/administrators.	Unqualified and/or risky hospice leadership that could contribute to program integrity or quality-of-care issues	X	X	CMS has existing authority These measures are already part of the existing requirements for the “high priority” risk category for providers

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30. Reporting Abuse and Neglect: Update CoPs to require hospice care providers to report all allegations of abuse and neglect immediately to survey agencies, regardless of whether the alleged perpetrator is affiliated with the hospice.	Ensuring hospices are delivering high-quality care and meet health and safety requirements	X	X	CMS has existing authority As recommended in January 2023 GAO report.
ACCREDITING ORGANIZATIONS AND DEEMED STATUS				
31. There is currently a rule under OMB review that may address some of the Accrediting Organization (AO) oversight issues: *Strengthening Oversight of Accrediting Organizations (AO) and Preventing AO Conflict of Interest, and Related Provisions* (CMS-3367) – It is best at this time to wait until the proposed rule is released before providing additional AO-focused recommendations				
ROLE OF MEDICARE ADMINISTRATIVE CONTRACTORS (MACs)				
32. Require newly enrolling providers to complete training from MACs: Topics include introduction to Medicare, basics of the Medicare hospice benefit, billing for the new provider, and other provider-specific education and resources available and provided by the MAC. MAC will receive information about newly certified providers, reach out with resources, and confirm and report attendance and participation in training and provider-specific education.	Hospice confusion and/or ignorance around existing rules and guidance may be contributing to program integrity issues	X		CMS has existing authority
33. Additional MAC billing scrutiny and audits for co-located hospices: Require MACs to pursue additional billing scrutiny and audits on hospices which are co-located with multiple hospice agencies at a single address.	Address red flags for providers already enrolled and stop what could be continued fraudulent billing.	X	X	CMS has existing authority
34. Prepay Targeted Probe & Educate (TPE) for new providers: Require prepay TPE by all three MACs for new providers.	Hospice confusion and/or ignorance around existing rules and guidance may be contributing to program integrity issues	X		CMS has existing authority