



Administrator
Washington, DC 20201

August 31, 2023

The Honorable Earl Blumenauer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Blumenauer:

Thank you for your letter expressing concerns about fraud, waste, and abuse within the Medicare hospice benefit. In your letter, you expressed support for recent Centers for Medicare & Medicaid Services (CMS) efforts in this area, and you included several recommendations for additional action that CMS could take to improve program integrity. We appreciate these recommendations. Effective oversight and enforcement are important to protect the integrity of the Medicare program, especially when it comes to end-of-life care. We continue to enhance oversight over the Medicare hospice benefit.

CMS routinely assesses program integrity risks and vulnerabilities, including those related to the Medicare hospice benefit. In addition to focusing on reducing program integrity risks under the hospice benefit once a hospice is enrolled in the Medicare program, we are taking steps aimed at addressing potentially fraudulent hospices on the front end - before they enroll or soon after enrolling in the Medicare program.

As part of our hospice program integrity strategy, CMS undertook a nationwide project to conduct unannounced site visits for the nearly 7,000 hospices enrolled in Medicare. CMS will take administrative action, when appropriate, for those that are no longer operational. In addition, on July 13, 2023, CMS began placing newly enrolling hospices located in Arizona, California, Nevada, and Texas in a provisional period of enhanced oversight (PPEO) where we will conduct pre-payment medical review.¹ Over the last 12 months, CMS has received numerous reports of hospice fraud, waste, and abuse in these four states. The number of enrolled hospices has also increased significantly in these states, raising serious concerns about market oversaturation. One of the recommendations in your letter was to implement a targeted moratorium on the enrollment of new hospices due to your concerns about the overabundance of hospices. Consistent with these concerns, the additional oversight the PPEO will furnish will help to identify fraudulent hospices up front and to ensure that the hospices are treating patients that are eligible for the Medicare hospice benefit. With the same goal in mind, but not limited to those four states, CMS is initiating a post-payment medical review pilot project to review hospice claims following an individual's first 90 days of hospice care.² This project will help inform future medical review activities aimed at determining, earlier during a patient's length of

¹ [MLN7867599 - Period of Enhanced Oversight for New Hospices in Arizona, California, Nevada, & Texas \(cms.gov\)](https://www.cms.gov/MLN7867599-Period-of-Enhanced-Oversight-for-New-Hospices-in-Arizona-California-Nevada-&-Texas).

² <https://noridiansmrc.com/current-projects/01-099/>

stay, whether hospices are submitting claims to Medicare for patients that are eligible for the benefit.

CMS also proposed several regulatory changes – including some that were suggested by the hospice industry – related to enrollment or a change in ownership. Your letter expressed support for one such provision in the Fiscal Year 2024 Hospice Wage Index and Payment Rate Update final rule that will require physicians who certify patient eligibility for Medicare hospice care to be enrolled in or opted-out of Medicare. This provision will help to ensure that such physicians are fully screened, and their qualifications confirmed, before they can certify hospice services. Additionally, in the Calendar Year 2024 Home Health Prospective Payment System proposed rule, CMS proposed to: (1) move hospices to the high-risk screening level for initial Medicare enrollment where criminal background checks of the hospice’s owners would be performed; (2) prohibit the transfer of the provider agreement and Medicare billing privileges of a new hospice for 36 months – like the existing rules for home health agencies; and (3) reiterate existing policy that the hospice’s administrator and medical director must be disclosed on the hospice’s enrollment application as managing employees. We believe these proposals related to hospice ownership and management would strengthen protections against hospice fraud schemes and improve transparency in the future.

In addition to our hospice program integrity strategy, CMS also works to ensure that hospices are compliant with Medicare health and safety standards. In the Calendar Year 2024 Home Health Prospective Payment System proposed rule, we proposed a methodology for identifying poorly-performing hospices that should be part of a Special Focus Program (SFP). Hospices that are unable to resolve deficiencies and that cannot meet the proposed SFP completion criteria, would be placed on a termination track. We are now posting hospice survey findings on the CMS Quality, Safety and Oversight Reports site, and we will post information about the SFP once the program is underway. We believe these updates, along with basic provider information (e.g., ownership, etc.) and the SFP information, will enhance patient and family access to more hospice quality data and better empower families as they make their hospice provider selections.

Finally, with regard to marketing conduct, in the Fiscal Year 2020 Hospice Wage Index and Payment Rate Update final rule, we addressed vulnerabilities in coverage transparency under the Medicare hospice benefit by finalizing modifications to the election statement content requirements. This included a requirement for hospices to add information to the election statement—signed by the individual (or representative) electing to receive hospice care—about the holistic, comprehensive nature of the Medicare hospice benefit. The above requirement adds to the long-standing regulatory requirement that the election statement must include the individual's (or representative's) acknowledgement that s/he has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness and related conditions. If we suspect that hospices are engaging in potentially fraudulent activity, as identified during Unified Program Integrity Contractor investigations or other means, CMS may conduct interviews with patients and/or family members. During interviews, we will attempt to determine if the patient/representative had a full understanding of the hospice benefit when the beneficiary/representative made the election. If a hospice is found to have engaged in fraudulent activity, CMS can take further action.

As we monitor hospice program integrity, we will continue to consider whether other actions may be appropriate. Other actions could include, for example, an expansion of the post-payment medical review pilot project, an expansion of the provisional period of enhanced oversight, or a moratorium that would prevent all new hospices in certain areas from enrolling in the Medicare program. We will also consider whether additional future regulatory changes are needed.

Thank you again for your interest in this important issue as we work toward strengthening and improving end-of-life care for all beneficiaries and their families and caregivers. If you have any additional questions, please contact the CMS Office of Legislation. I will also provide this response to the co-signers of your letter.

Sincerely,

A handwritten signature in blue ink that reads "Chiquita Brooks-LaSure". The signature is written in a cursive, flowing style.

Chiquita Brooks-LaSure