



Center for Clinical Standards and Quality

Ref: QSO-22-01-Hospice

DATE: October 20, 2021

TO: State Survey Agency Directors

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

SUBJECT: Upcoming rulemaking for survey and enforcement requirements for hospice programs.

Memorandum Summary

- ***CMS is committed*** to taking necessary steps to ensure the quality and safety of hospice care. CMS is currently engaged in rulemaking to implement Section 407 of the [Consolidated Appropriations Act \(CAA 2021\)](#), which was signed into law on December 27, 2020.
- ***Regulatory Requirements:*** CMS has introduced a proposed rule ([86 FR 35874](#)) through the CY 2022 Home Health Prospective Payment System Rate Update (HH PPS). This proposed rule is expected to be finalized and effective on January 1, 2022.

Background:

The CAA 2021 (Sec. 407) amends Title XVIII of the Social Security Act (Act) by adding nine provisions that establish additional survey and enforcement requirements for hospice programs. The following provisions were effective upon enactment: improvement of the consistency of surveys and establishment of a new Special Focus Program for poor-performing hospice providers. Provisions effective October 1, 2021, include: requirements for use of multidisciplinary survey teams, the prohibition of conflicts of interest of surveyors, expanding CMS-based surveyor training to Accrediting Organizations (AOs), and the requirement for AOs to begin use of the Form CMS-2567 to document survey findings. The establishment of a hospice complaint hotline is effective one year after the CAA 2021's December 27, 2020 enactment. Finally, the public disclosure of survey information and the requirement to develop and implement a range of enforcement remedies is effective no later than October 1, 2022.

Section 1865(a) of the Act provides that CMS may recognize and approve national AO Medicare accreditation programs which demonstrate that their health and safety standards and survey and oversight processes meet or exceed those used by CMS to determine compliance with applicable requirements. The CAA 2021 provisions expanding requirements for CMS-approved AOs applies to the three AOs that currently have deeming authority for hospice programs (Accreditation Commission for Health Care (ACHC), Community Health Accreditation Partner

(CHAP), and The Joint Commission (TJC)). Half of all Medicare-certified hospices are deemed by these AOs.

CMS proposed implementing regulations as part of the CY 2022 HH PPS proposed rule, which was the most expeditious means to implement these statutory requirements.

Discussion:

In current rulemaking, CMS outlines the statutory requirements and dates included in the CAA 2021. Given that some statutory timelines are effective prior to the effective date of the final rule, CMS's ability to conduct compliance monitoring activities for these provisions will be limited until sixty (60) days from the effective date of the new hospice survey and enforcement regulations in the CY 2022 HH PPS final rule. State Agencies (SAs) and AOs are expected to comply with these and all applicable statutory requirements and are bound by the reasonable interpretation of the CAA 2021 in the absence of implementing regulations.

References:

The CY 2022 HH PPS proposed rule is located in the Federal Register (86 FR 35874) at: <https://www.federalregister.gov/documents/2021/07/07/2021-13763/medicare-and-medicaid-programs-cy-2022-home-health-prospective-payment-system-rate-update-home>.

Sec. 407 of the CAA 2021 Hospice Provisions (beginning on page 4775/5593): <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>.

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

Effective Date: Immediately. This memo should be communicated with all survey and certification staff, their managers, and the State/CMS Location training coordinators within 30 days of this memorandum.

/s/

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