Hospice Program Integrity Enforcement Remedies Guide

Reference: Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID– 19 Reporting Requirements for Long Term Care Facilities; November 9, 2021

Centers for Medicare and Medicaid Services

The following enforcement remedies are available instead of, or in addition to, termination of the hospice program's provider agreement, for a period not to exceed 6 months:

(a) Civil money penalties.

(b) Suspension of payment for all new patient admissions.

(c) Temporary management of the hospice program.

(d) Directed plan of correction.

(e) Directed in-service training

Purpose of remedies.

The purpose of remedies is to ensure effect compliance with regulatory requirements in order to protect the health and safety of individuals under the care of a hospice program.

Basis for imposition of remedies.

- CMS may impose one or more remedies for each condition-level deficiency constituting noncompliance with one or more conditions of participation and may be based on failure to correct previous deficiency findings as evidenced by repeat condition-level deficiencies.
- CMS states that imposition of remedies will be **"based on the degree of noncompliance with the hospice program Federal requirements".**

Plan of correction requirement.

Regardless of which remedy is applied, a non-compliant hospice program must submit a plan of correction for approval by CMS or the State Survey Agency

Remedy Factors

CMS bases its choice of remedy or remedies on consideration of **one or more factors** that include, but are not limited to, the following:

(a) The extent to which the deficiencies pose immediate jeopardy to patient health and safety.

(b) The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.

(c) The presence of repeat deficiencies, the hospice program's overall compliance history and any history of repeat deficiencies at either the parent hospice program or any of its multiple locations.

(d) The extent to which the deficiencies are directly related to a failure to provide quality patient care.

(e) The extent to which the hospice program is part of a larger organization with performance problems.

(f) An indication of any system-wide failure to provide quality care.

1. Temporary Management

CMS may impose temporary management of a hospice program if:

- a hospice program has a condition-level deficiency, and
- CMS determines that management limitations or the deficiencies are likely to impair the hospice program's ability to correct the noncompliance and return the hospice program to compliance with all the conditions of participation within the timeframe required.
- **Hospice provider pays the management salary**

Temporary management continues until one of the following occur:

- Determination that the hospice program has achieved substantial compliance and has the management capability to ensure continued compliance with all the conditions of participation.
- CMS terminates the provider agreement.
- The hospice program resumes management control without CMS approval. In this case, CMS initiates termination of the provider agreement and may impose additional remedies.
- Temporary management will not exceed a period of 6 months from the date of the survey identifying noncompliance.

2. Directed Plan of Correction

CMS may impose a directed plan of correction when a hospice program:

- Has one or more condition-level deficiencies that warrant directing the hospice program to take specific actions; or
- Fails to submit an acceptable plan of correction.

Hospice would receive:

- CMS notification prior to imposing the remedy.
- Direction from CMS or the temporary manager (with CMS approval) to take corrective action to achieve specific outcomes within specific timeframes.

Timeframe:

- Compliance is expected with the conditions of participation within the timeframes specified in the directed plan of correction, which may not to exceed 6 months.
- Additional remedies for non-compliance may be applied for compliance failure.

3. Directed Inservice Training

CMS may require the staff of a hospice program to attend in-service training program(s) if CMS determines all the following:

- The hospice program has condition-level deficiencies.
- Education is likely to correct the deficiencies.
- The programs are conducted by established centers of health education and training or consultants with background in education and training with Medicare hospice providers, or as deemed acceptable by CMS or the State.
- **Hospice program is responsible for in-service program cost.**
- Hospice would receive CMS notification prior to imposing the remedy.
- After the hospice program staff has received in-service training, if the hospice program has not achieved substantial compliance, CMS may impose one or more other remedies.

4. Suspension of Payment for New Admissions

- CMS may suspend payment for **all new admissions** to a hospice program on or after the determination date that remedies should be imposed.
- Before suspending payments for all new admissions, CMS provides the hospice program notice of the suspension of payment.
- The hospice program may not charge a newly admitted hospice patient who is a Medicare beneficiary for services for which Medicare payment is suspended unless the hospice program can show that, before initiating care, it gave the patient or his or her representative oral and written notice of the suspension of Medicare payment in a language and manner that the beneficiary or representative can understand.
- The suspension of payment for all new admissions remedy may be imposed anytime a hospice program is found to be out of substantial compliance with the conditions of participation.
- The suspension of payment for all new admissions remains in place until CMS determines that the hospice program has achieved substantial compliance with the conditions of participation or is terminated, as determined by CMS.

5. Civil Monetary Penalties (CMPs)

CMS may impose a civil money penalty against a hospice program regardless of whether the hospice program's deficiencies pose immediate jeopardy for the following:

- the number of days the hospice program is not in compliance with one or more conditions of participation
- for each instance that a hospice program is not in compliance
- for the number of days of immediate jeopardy

- **NOTE:** A per-day and a per-instance civil money penalty (CMP) may not be imposed simultaneously for the same deficiency in conjunction with a survey.

CMS considers the following factors in determining the amount of the penalty:

- Degree of noncompliance with the hospice program Federal requirement
- Threat to beneficiary health and safety
- The size of a hospice program and its resources
- Evidence that the hospice program has a built-in, self-regulating quality assessment and performance improvement system to provide proper care, prevent poor outcomes, control patient injury, enhance quality, promote safety, and avoid risks to patients on a sustainable basis that indicates the ability to meet the conditions of participation and to ensure patient health and safety.
- No penalty assessment exceeds $10,000 for each day a hospice program is not in substantial compliance with one or more conditions of participation.
- CMS provides the hospice program with written notice of the intent to impose a civil money penalty

CMP Upper Range	**CMP** Mid-Range	**CMP Lower Range**
Penalties in the upper range of **$8,500 to $10,000 per day**, are imposed for a condition-level deficiency that is immediate jeopardy. The penalty in this range continues until substantial compliance can be determined based on a revisit survey.	Penalties in the range of $**1,500 up to $8,500 per day** of noncompliance are imposed for a repeat or condition-level deficiency or both that does not constitute immediate jeopardy but is directly related to poor quality patient care outcomes.	Penalties in this range of **$500 to $4,000** are imposed for a repeat or condition-level deficiency or both that does not constitute immediate jeopardy and that are related predominately to structure or process-oriented conditions rather than directly related to patient care outcomes.

Penalties imposed per instance of noncompliance may be assessed for **one or more** events of condition-level deficiency that are identified and where the noncompliance was corrected during the onsite survey.

When penalties are imposed for per instance of noncompliance, or more than one per instance of noncompliance, the penalties will be in the range of **$1,000 to $10,000 per instance**, **not to exceed $10,000 each day** of noncompliance,