

# Congress of the United States

Washington, DC 20515

May 7, 2024

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Re: Continued Hospice Benefit Integrity Issues in the Medicare Program

Dear Administrator Brooks-LaSure:

We write to express our continued concerns about fraud and abuse within the hospice benefit, which is intended to provide services to individuals when they are at their most vulnerable and approaching the end of life. When electing to receive hospice care, individuals and their families must be confident the provider is committed to delivering individualized, compassionate care that optimizes quality of life; however, we continue to hear about instances of pervasive fraud and abuse.

In a recent *ProPublica* article, a Medicare beneficiary with dementia who lives in a nursing home was fraudulently enrolled in hospice.<sup>1</sup> Neither the patient nor her family ever elected hospice and the provider in question could not be reached by the family, but Medicare continued to pay the provider. Additionally, as reported in the most recent *ProPublica* article, it appears the Centers for Medicare & Medicaid Services (CMS) and the accrediting organizations approved by your agency have continued to certify hospices for participation in Medicare in areas at high risk for fraud and abuse, including hospices located in buildings already flagged as potential fraud hot spots. Specifically, in 2023, Medicare certified 15 more hospices at a two-story building in Los Angeles, California that is already home to more than 100 hospices.

CMS has taken positive steps to increase its oversight of hospice programs in response to a previous *ProPublica* and *New Yorker* investigation and several congressional inquiries.<sup>2,3,4,5</sup> As outlined in the August 2023 blog post, CMS has implemented a Provisional Period of Enhanced Oversight for California, Nevada, Texas, and Arizona; finalized a “36-month rule” in hospice to prevent quick licensure sales; and completed a nationwide hospice site visit project, among other efforts.<sup>6</sup> However, we are deeply concerned by new reports indicating many potentially fraudulent hospices are continuing to bill Medicare and CMS is still enrolling suspicious new providers into the program.

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<sup>1</sup> [Medicare Certifies Hospices in California Despite State Ban on New Licenses — ProPublica](#)

<sup>2</sup> [How the Hospice Movement Became a For-Profit Hustle — ProPublica](#)

<sup>3</sup> [How Hospice Became a For-Profit Hustle | The New Yorker](#)

<sup>4</sup> [556F507B5FE199FA986DF4A0BF438998.cms-hospice-oversight-letter.pdf \(house.gov\)](#)

<sup>5</sup> [2023-07-14-cms-follow-up-hospice\\_0.pdf \(house.gov\)](#)

<sup>6</sup> <https://www.cms.gov/blog/cms-taking-action-address-benefit-integrity-issues-related-hospice-care>

Prior to enrolling in the Medicare program, providers must demonstrate they are able to meet the hospice Conditions of Participation – standards for health and safety. As required by law, hospices are surveyed by the state survey agency or by a CMS-approved accrediting organization before initial enrollment and at least once every three years thereafter to verify their compliance with federal requirements.<sup>7</sup> Additional surveys are conducted when complaints from patients, caregivers, health providers, or others are received. For the most severe complaints, the state survey agency must conduct an onsite survey to investigate the complaint within certain required timeframes.

Although CMS has worked hard to implement the new survey and enforcement provisions required by the *Consolidated Appropriations Act, 2021*, we are concerned that in fiscal year 2022 more than 10 percent of hospices were not surveyed within the required 36-month timeframe.<sup>8</sup> While CMS indicates that the COVID-19 Public Health Emergency resulted in the need to reprioritize survey activities in fiscal year 2022, as noted in the *Fiscal Year 2025 Performance Budget: Justification of Estimates for Appropriations Committees*, there are longstanding hospice quality of care issues that need to be addressed.<sup>9</sup> The Department of Health and Human Services' Office of Inspector General (HHS-OIG) previously reported the majority of hospices had at least one survey deficiency in the quality of care they provide and noted it was essential for CMS to hold hospices accountable to protect beneficiaries and the Medicare program.<sup>10</sup> Additional reports and investigations conducted by the HHS-OIG highlight concerning issues related to hospice fraud, waste, and abuse.<sup>11</sup>

To better understand the actions CMS has taken to increase its program integrity efforts and to implement key provisions of the *Consolidated Appropriations Act, 2021*, we respectfully request you respond to the following questions by May 31, 2024:

1. What are the results to date from the Provisional Period of Enhanced Oversight, implemented on July 13, 2023, and the pilot project to review hospice claims following an individual's first 90 days of hospice care?
2. CMS conducted approximately 6,700 hospice program integrity site visits during 2023, but only acted against 28 hospices.<sup>12</sup> Why were such a small number of hospice certifications deactivated/revoked? Was such a site visit made to the hospice that fraudulently enrolled the patient referenced in the January 2024 *ProPublica* article and what is the status of that hospice?
3. What steps has CMS taken to work with states to combat fraudulent hospices from becoming licensed and/or certified?

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<sup>7</sup> <https://www.cms.gov/files/document/hospice-fact-sheet-mln2078643.pdf>

<sup>8</sup> [FY2025 Congressional Justification \(cms.gov\)](#)

<sup>9</sup> *Id.*

<sup>10</sup> [Hospice Deficiencies Pose Risks to Medicare Beneficiaries \(OEI-02-17-00020; 07/19\) \(hhs.gov\)](#)

<sup>11</sup> [Hospice | HHS-OIG](#)

<sup>12</sup> [HHS FY 2023 Agency Financial Report](#)

4. What additional actions does CMS plan to take to address the large numbers of potentially fraudulent hospices that have been enrolled into the Medicare program in the last several years?
5. What actions are being taken to prevent beneficiary harm, like in the instance cited in the January 2024 *ProPublica* article of the patient with dementia residing in a nursing home being enrolled in hospice without consent and not being able to access needed care?
6. What is the status of CMS's implementation of section 407 of the *Consolidated Appropriations Act, 2021*? Including the status of:
  - a. How often and under what circumstances has CMS used its new enforcement tools, such as civil monetary penalties.
  - b. When the first special focus program participants will be announced.
  - c. When public reporting of hospice survey results will be made available on the CMS website in a manner that is prominent, easily accessible, searchable, and readily understood and when existing Quality and Certification Oversight Reports data will be up to date.
  - d. Steps CMS is taking to measure and reduce inconsistency in survey results, including additional oversight of accrediting organizations, given the recent reports regarding the proliferation of potentially fraudulent hospices in certain states.
  - e. Whether CMS achieved its target of having 98 percent of hospices surveyed within 36 months in fiscal year 2023 (up from 87.1 percent in fiscal year 2022) and, if not, how CMS plans to reach its 98 percent target for fiscal years 2024 and 2025.<sup>13</sup>

We must urgently address the bad actors who are abusing the hospice benefit and harming patients and families. Hospice is an important part of a patient's care, but only if it is operating as intended. We are prepared to work with CMS to ensure this continues to be safe for patients, while ensuring that congressional oversight is carried out, and we look forward to hearing from you on these matters.

Sincerely,

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<sup>13</sup> [FY2025 Congressional Justification \(cms.gov\)](#)



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Earl Blumenauer  
Member of Congress




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Beth Van Duyne  
Member of Congress



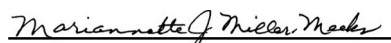
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Brad R. Wenstrup, D.P.M.  
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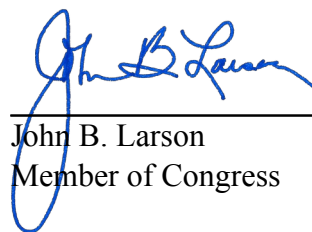
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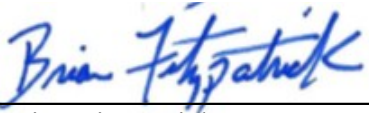
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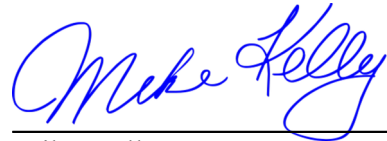
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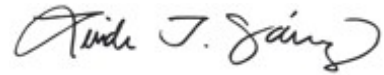
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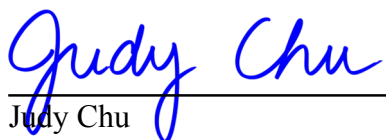
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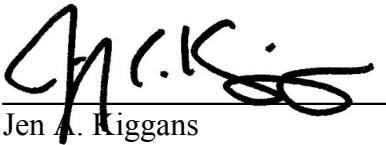
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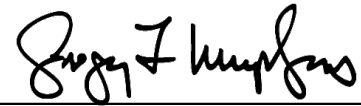


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