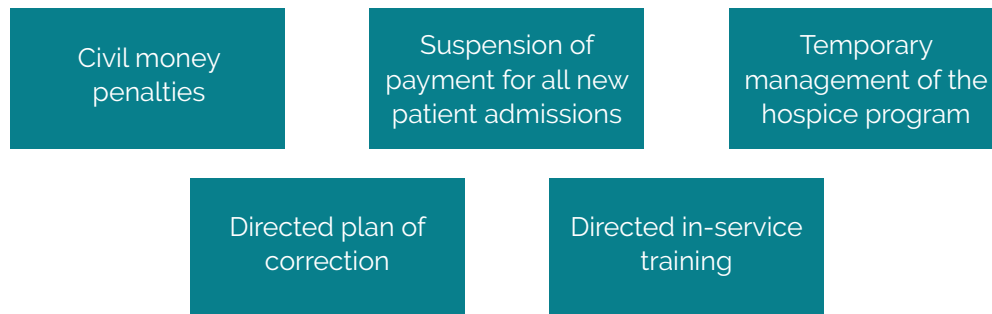


The Centers for Medicare and Medicaid Services (CMS) may take action(s) to remove and correct deficiencies in a hospice program through an enforcement remedy, termination, or both. The purpose of remedies is to ensure prompt compliance with program requirements to protect the health and safety of individuals under the care of a hospice program. Regulations guiding hospice enforcement remedies are included in eCFR ([86 FR 62425](#)), Part 488, Survey, Certification, and Enforcement Procedures, Subpart N—Enforcement Remedies for Hospice Programs with Deficiencies.

## GENERAL INFORMATION

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:



While not a specific remedy in Subpart N, providers may also be selected for participation in the CMS hospice Special Focus Program.

[See the CHAP's Special Focus Program for detailed information](#)

## BASIS FOR IMPOSITION OF REMEDIES

When CMS chooses to apply one or more remedies, the remedies are applied based on 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.

- Number of remedies - CMS may impose one or more remedies for each condition-level deficiency constituting noncompliance.
- 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.

## CHOICE OF 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.

## EXPLANATION OF REMEDIES

### 1. CIVIL MONETARY PENALTIES (CMPs)

This guide contains an overview of the imposition of CMPs as an enforcement remedy. There is extensive detail about CMPs in the regulatory text at [§ 488.1245 Civil money penalties](#) that are not included in this guide and hospice providers should review.

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

- › 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.

#### CMP MID-RANGE

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.

#### CMP LOWER RANGE

Penalties in this range of **\$500 to \$4,000** are imposed for a repeat or condition-level deficiency or both that do 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 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.

### Notification and Appeal of CMPs

- CMS provides the hospice program with written notice of the intent to impose a civil money penalty.
- A hospice program may request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty. The request must meet the requirements in [§ 498.40 of this chapter](#).
- Waiver of a hearing
  - ▶ A hospice program may waive the right to a hearing, in writing, within 60 calendar days from the date of the notice imposing the civil money penalty.
  - ▶ If a hospice program timely waives its right to a hearing, CMS reduces the penalty amount by 35 percent, and the amount is due within 15 calendar days of the hospice program agreeing in writing to waive the hearing.
  - ▶ If the hospice program does not waive its right to a hearing, the civil money penalty is not reduced by 35 percent.

*Review [§ 488.1245 Civil money penalties](#) for details about decreased penalty amounts, increased penalty amounts, accrual, and duration of penalty (with/without immediate jeopardy and, computation and notice of total penalty amount, due date for payment of penalty, and review of the penalty.*

## 2. 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.
- Under this remedy, 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 remedies 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.
- The remedy ends when any of the following occurs:
  - ▶ CMS determines that the hospice program has achieved substantial compliance with all the conditions of participation.
  - ▶ When the hospice program is terminated, or CMS determines that the hospice program is not in compliance with the conditions of participation at a maximum of 6 months from the date of the survey identifying the noncompliance.
- Payments for all new admissions to the hospice program resume prospectively on the date that CMS determines that the hospice program has achieved substantial compliance with the conditions of participation.

### 3. TEMPORARY MANAGEMENT

CMS may impose temporary management of a hospice program if it determines that a hospice program has a condition-level deficiency(ies) and CMS determines that management limitations or the deficiency(ies) 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.

- › Notification - CMS notifies the hospice program that a temporary manager is being appointed.
- › The temporary manager may be a qualified external contractor or potentially an internal corporate employee if applicable.
- › The temporary manager must be approved by CMS.
- › Termination - If the hospice program fails to relinquish authority and control to the temporary manager, CMS terminates the hospice program's provider agreement

#### Temporary Management Duration

Temporary management continues until one of the following occurs:

- › 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.

#### Temporary manager's salary

The temporary manager's salary is subject to the following:

- › Is paid directly by the hospice program while the temporary manager is assigned to that hospice program
- › Is paid at fair market value
- › Covers additional costs incurred by the temporary manager

A hospice program's failure to pay the salary and other costs of the temporary manager is considered a failure to relinquish authority and control to temporary management.

### 4. 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.
- › CMS will notify the hospice program before imposing the remedy.
- › CMS or the temporary manager (with CMS approval) may direct the hospice program to take corrective action to achieve specific outcomes within specific timeframes.
- › Duration of remedy - the hospice program fails to achieve compliance with the conditions of participation within the timeframes specified in the directed plan of correction, which may not exceed 6 months, CMS does one of the following:
  - ▶ May impose one or more other remedies
  - ▶ Terminates the provider agreement

## 5. 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 a background in education and training with Medicare hospice providers, or as deemed acceptable by CMS or the State.
- CMS will notify the hospice program before imposing the remedy.
- The hospice program pays for the directed in-service training for its staff.
- Post-training
  - ▶ 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.

## ACTION WITH/WITHOUT DEFICIENCIES POSE IMMEDIATE JEOPARDY

### WITH IMMEDIATE JEOPARDY

If there is immediate jeopardy to the hospice program's patient health or safety, the following rules apply:

- CMS immediately terminates the hospice program provider agreement.
- CMS terminates the hospice program provider agreement no later than 23 calendar days from the last day of the survey, if the immediate jeopardy has not been removed by the hospice program.
- In addition to a termination, CMS may impose one or more enforcement remedies, as appropriate.
  - ▶ 2-calendar day notice. Except for civil money penalties, for all remedies imposed when there is immediate jeopardy, notice must be given at least 2 calendar days before the effective date of the enforcement action.
  - ▶ Transfer of care. A hospice program, if its provider agreement is terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local hospice program within 30 calendar days of termination.

### WITHOUT IMMEDIATE JEOPARDY

If the hospice program is no longer in compliance with the conditions of participation, either because the condition-level deficiency or deficiencies substantially limit the provider's capacity to furnish adequate care but do not pose immediate jeopardy, or the hospice program has repeat condition-level deficiencies based on the hospice program's failure to correct and sustain compliance, CMS does either of the following.

- Terminates the hospice program's provider agreement.
- Imposes one or more enforcement remedies instead of termination, for a period not to exceed 6 months.
  - ▶ 15-calendar day notice. Except for civil money penalties, for all remedies imposed when there is no immediate jeopardy, notice must be given at least 15 calendar days before the effective date of the enforcement action.
  - ▶ Not meeting criteria for continuation of payment. If a hospice program does not meet the criteria for continuation of payment under, CMS terminates the hospice program's provider agreement.

- ▶ Termination timeframe when there is no immediate jeopardy. CMS terminates a hospice program within 6 months of the last day of the survey, if the hospice program is not in compliance with the conditions of participation, and the terms of the plan of correction have not been met.
- ▶ Transfer of care. A hospice program, if its provider agreement terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local hospice program within 30 calendar days of termination. The State must assist the hospice program in the safe and orderly transfer of care and services for the patients to another local hospice program.

## CONTINUATION OF PAYMENTS TO A HOSPICE PROGRAM WITH DEFICIENCIES

- ▶ CMS may continue payments to a hospice program with condition-level deficiencies that do not constitute immediate jeopardy for up to 6 months from the last day of the survey if the following criteria are met.
  - ▶ Criteria - CMS may continue payments to a hospice program not in compliance with the conditions of participation for the specified period if all of the following criteria are met:
    - An enforcement remedy, or remedies, has been imposed on the hospice program and termination has not been imposed.
    - The hospice program has submitted a plan of correction approved by CMS.
    - The hospice program agrees to repay the Federal Government payments received under this if corrective action is not taken per the approved plan and timetable for corrective action.
  - ▶ Termination - CMS may terminate the hospice program's provider agreement at any time if the criteria are not met.
- ▶ Cessation of payments for new admissions
  - ▶ If termination is imposed, either on its own or in addition to an enforcement remedy or remedies, or if any of the criteria are not met, the hospice program will receive no Medicare payments, as applicable, for new admissions following the last day of the survey.
- ▶ Failure to achieve compliance with the conditions of participation
  - ▶ If the hospice program does not achieve compliance with the conditions of participation by the end of the specified period, CMS terminates the provider agreement of the hospice program.

## TERMINATION OF PROVIDER AGREEMENT

The effect of termination by CMS

- ▶ The provider agreement ends which includes the termination of:
  - ▶ Payment to the hospice program
  - ▶ Any enforcement remedy

## BASIS FOR TERMINATION

CMS terminates a hospice program's provider agreement under any one of the following conditions:

- ▶ The hospice program is not in compliance with the conditions of participation.
- ▶ The hospice program fails to submit an acceptable plan of correction within the timeframe specified by CMS.
- ▶ The hospice program fails to relinquish control to the temporary manager if that remedy is imposed by CMS.

- › The hospice program fails to meet the eligibility criteria for continuation of payment.
- › CMS notifies the hospice program and the public of the termination

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## PROCEDURES FOR TERMINATION

- › CMS terminates the provider agreement per procedures outlined in § 489.53 Termination by CMS.
- › Payment is available for up to 30 calendar days after the effective date of termination for hospice care furnished under a plan established before the effective date of termination.

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## APPEAL

A hospice program may appeal the termination of its provider agreement by CMS under [part 498](#) of federal regulations.

## REFERENCES

The Centers for Medicare and Medicaid Services. (2021, Nov 9). 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. Retrieved from <https://www.govinfo.gov/content/pkg/FR-2021-11-09/pdf/2021-23993.pdf>

The Centers for Medicare and Medicaid Services. (2021, Nov 9). 42 CFR Part 488 Subpart N. Retrieved from <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-488/subpart-N>