



Regulator Updates for Hospice

FY2024 Hospice Wage Index and Payment Rule Update

The FY 2024 hospice payment update percentage is 3.1% (an estimated increase of \$780 million payments from FY 2023). This results from the 3.3% inpatient hospital market basket percentage increase reduced by a 0.2 percentage point productivity adjustment. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the CAA, 2021 (Pub. L. 116-260) to change the payment reduction for failing to meet hospice quality reporting requirements from 2 to 4 percentage points.

Beginning in FY 2024 and for each subsequent year, hospices that fail to meet quality reporting requirements receive a 4-percentage point reduction to the annual hospice payment update percentage increase for the year.

The FY 2024 rates for **hospices that do not submit the required quality data would be updated by -0.9%**, which is why the FY 2024 hospice payment update percentage of 3.1% minus 4 percentage points.



The HOPE Tool

The **HOPE tool** that it has been developing to replace the Hospice Item Set, including the likely addition of two more measures down the road. Field testing of this new methodology was completed late last year, and CMS is now analyzing those results.

Hospice Outcomes and Patient Evaluation tool (HOPE)

Provides an update on Health Equity and future quality measures; and provides updates on the Consumer Assessment of Healthcare Providers and Systems, Hospice Survey Mode Experiment. This rule also proposes to codify hospice data submission thresholds and discusses updates to hospice survey and enforcement procedures. Additionally, the rule proposes to require hospice certifying physicians to be Medicare-enrolled or to have validly opted-out.



CAP

The hospice payment update includes a statutory aggregate cap limiting the overall payments per patient made to a hospice annually. The hospice cap amount for **FY 2024 is \$33,494.01**, which is equal to the FY 2023 cap amount (\$32,486.92), updated by the FY 2024 hospice payment update percentage of 3.1%



CMS finalized the Home Health prospective payment system rate update which includes many provisions impacting hospices. The following provider enrollment regulations were finalized:

424.502 Definitions. Revises the definition of managing employee to include Hospice and SNF Medical Director and Administrator.

424.518 Screening levels for Medicare providers and suppliers. Revised to accommodate PHE waiver for fingerprint based criminal background checks for newly enrolled high-risk providers, including hospices.

424.527 Provisional period of oversight. Codifies who is subject to a provisional period of oversight and the effective date, including hospices.

424.530 Denial of enrollment in the Medicare program. Reapplication bar changed to 10 years from 3 years. A provider or supplier that is currently subject to a reapplication bar may not order, refer, certify, or prescribe Medicare-covered services, items, or drugs, and Medicare will not pay for services ordered.

424.530(a)(1) change the 12-month time frame to 6 months for deactivations related to non-billing, including hospices.

424.550 Prohibitions on the sale or transfer of billing privileges. Applies the 36-month rule to hospice providers.

Our certifying physician enrollment requirement is part of a larger effort by CMS to address hospice fraud, waste, and abuse among these providers.

Physicians must be enrolled in or opted out of Medicare for Hospice services to be paid. Requiring enrollment or opt-out will allow us to screen the physician to ensure they are qualified (e.g., licensed) to certify the terminal condition.

This will not be implemented or enforced until **May 1, 2024**, to give unenrolled or non-opted-out physicians more time to enroll in or opt-out of the Medicare program.

Hospice Special Focus Program (SFP)

The Hospice Special Focus Program (SFP) will proceed with implementation in 2024. SFP is a program intended to identify hospices as poor performers. Selected hospices will be subjected to increased oversight, and they must successfully complete the SFP program or be terminated from the Medicare program.

By implementing the SFP using a flawed algorithm, underlying criteria for selecting hospices for SFP will be based on:

- **Survey reports** with Condition-Level Deficiencies (CLDs)
- CMS Medicare data sources from the **Hospice Quality Reporting Program (HQRP)**
- **Medicare claims** and Consumer Assessment of Healthcare Providers and Systems (CAHPS) **Hospice Survey**

The process, as outlined, will fail to identify hospices most appropriate for additional oversight and support, and risk reducing access to higher-quality care by directing patients and families to hospices that perform most poorly relative to health and safety requirements.

Even CMS, in the final rule concludes, 'The final SFP algorithm is designed as **an initial step** in identifying poor quality indicators.'

As part of the CY2024 Proposed Physician Payment Rule, the Centers for Medicare & Medicaid Services (CMS) addressed several issues of interest to hospice providers, including proposed regulations designed to implement a provision of the Consolidated Appropriations Act of 2023 (Section 4121) providing hospices the **option of utilizing either Marriage and Family Therapists (MFT) or Mental Health Counselors (MHC) in lieu of Social Workers (SW) as part of the inter-disciplinary group (IDG).**

Relative to the provision related to MFTs and MHCs, as part of the final CY2024 Final Payment Rule, CMS has clarified that hospices would be **required to include only ONE of the disciplines (SW, MFT, MHC) as part of the IDG,**

“The hospice IDG will only be required to include one SW, one MFT, or one MHC. **The hospice is not required to include all three of these professions as members of the IDG.** We note that the hospice may choose (although is not required) to select more than one of these professions to serve as member(s) of the IDG. The MFT or MHC **must be hired as a direct employee** which would include the options of hiring full time, part time or per diem.”

Relative to concerns about staffing shortages and potential difficulties in hiring MFTs and MHCs, particularly in certain areas of the country, CMS states, **“We believe the MFT and MHC primarily provide counseling services and that counseling services are considered core services of the hospice.** The “extraordinary circumstance” provision is generally a short-term temporary event that was unanticipated. This may allow hospices the flexibility to contract for the MFT or MHC during temporary staffing shortages.

If a hospice chooses to contract with another Medicare-certified hospice or a non-hospice entity, the contracting hospice or non-hospice entity must maintain professional management responsibility for the services provided, in accordance with 418.100(e).”

Telehealth

Finalized regulation text changes related to the provision of telehealth services for Routine Home Care with the expiration of the COVID-19 PHE and for the use of telecommunications technology for the face-to-face encounter conducted by a hospice physician or hospice nurse practitioner for the sole purpose of hospice recertification through December 31, 2024.

You may use telehealth to conduct hospice care eligibility recertification through **December 31, 2024**.



Where to Find Updates

<https://www.federalregister.gov/public-inspection/2023-16116/medicare-program-fy-2024-hospice-wage-index-and-payment-rate-update-hospice-conditions-of>

<http://www.cms.gov/Center/Provider-%20Type/Hospice-Center.html>





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Thank You

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