

Media Fact Sheet: Lawsuit Challenges CMS's Hospice Special Focus Program (SFP)

Case Name: *Texas Association for Home Care & Hospice, et al. v. Xavier Becerra, et al.*, No. ___ (S.D. Texas).

Summary

A multi-state coalition of hospices and hospice associations are challenging the Centers for Medicare & Medicaid Services' (CMS) Hospice Special Focus Program (SFP) Final Rule and its implementation as unlawful and arbitrary. The plaintiffs seek a preliminary injunction to halt the Special Focus Program, which as CMS is implementing it, undermines patient safety, misrepresents hospice compliance records, and jeopardizes access to high-quality end-of-life care.

Background

- In 2020, Congress directed CMS to establish the SFP to enhance enforcement for a subset of underperforming hospices that CMS “has identified as substantially failed to meet” Medicare requirements.
- Congress intended the SFP as a tool to protect patients by targeting and correcting serious compliance issues identified by surveyors, with the poorest performing hospices being placed on the public Hospice SFP List until their record of compliance with Medicare requirements improved.
- Despite that clear statutory mandate, CMS promulgated the SFP Final Rule which used an algorithm to select hospices for the SFP that included not only findings of noncompliance with Medicare requirements but also indicators unrelated to compliance with Medicare requirements.
 - The SFP Final Rule relies heavily on the Hospice Care Index (HCI) and the Consumer Assessment of Healthcare Providers and Systems (CAHPS) hospice survey data, neither of which measure whether a hospice provider failing to meet Medicare requirements.
 - The SFP Final Rule further frustrates Congressional intent by using an algorithm that disadvantages large, established providers while advantaging smaller hospices and newly established hospices: (1) The algorithm does not account for a hospice’s size in counting the number of deficiencies. It treats a hospice serving 2,000 beneficiaries with 3 substantiated complaints the same as a hospice provider serving 100 beneficiaries with 3 substantiated complaints. (2) The algorithm places heavy weight on CAHPS scores and HCI data, even though many smaller and newer providers do not report CAHPS data or have HCI data.
- Members of Congress and stakeholders repeatedly warned CMS of the problems with the SFP Final Rule and that its implementation would erroneously result in some of the highest performing, mission-focused hospice programs being publicly listed as poor performers.
- Although Congress placed no deadline on CMS to issue the Special Focus Program List, CMS pressed forward and publicized the List on December 20, 2024. As predicted, CMS’s unlawful and arbitrary approach led to high-quality hospice programs being on the List while allowing truly noncompliant and fraudulent providers to evade scrutiny. Worse, CMS’s underlying data are rife with errors, including listing complaints as “substantiated” when they were not.

Key Concerns (why we sued)

- **Patient Harm:** Inclusion on the SFP list falsely labels quality providers as "poor performers," creating fear among patients and families when choosing and during critical end-of-life care. Arbitrary criteria risk driving patients away from high-quality providers, complicating access to compassionate and trustworthy care and disproportionately harming vulnerable populations, and discouraging choosing hospice altogether.
- **Flawed Data and Criteria:** CMS failed to scale substantiated complaints to hospice size. CMS also assigns average HCI scores to hospices with missing data, often overstating quality for some while unjustly penalizing others. Over 50% of hospices are exempt from reporting CAHPS data, skewing algorithm results and disproportionately targeting larger, more established providers. And CMS's underlying survey data on substantiated complaints are plagued with errors, counting complaints as substantiated that were not.
- **Failure to Address Growth of Low-Quality Providers:** Despite exponential growth in the number of hospices, CMS has failed to focus on oversight for new or smaller providers that pose higher risks of non-compliance. The SFP's emphasis on well-established providers distracts from addressing real issues in the rapidly expanding industry, such as potentially fraudulent and predatory actors.
- **Impact on Quality Hospice Care:** Increased survey frequency and loss of deemed status from accreditation for affected providers lead to heightened compliance costs, diverting resources from patient care. Providers may struggle to attract staff and volunteers essential to delivering compassionate care.

Call to Action

- CMS should withdraw its SFP selections of hospices and withdraw the SFP List and underlying data immediately.
- CMS should withdraw and revise the SFP Final Rule to align with Congressional intent, focusing on hospices with the worst record of substantial non-compliance with Medicare requirements.