



April 15, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

RE: Comments on the Strengthening Oversight of Accrediting Organizations (AOs) and Preventing AO Conflict of Interest, and Related Provisions Proposed Rule [[CMS-3367-P](#)]

Dear Administrator Brooks-LaSure,

California leads the nation in the population, with just over 39 million people, according to the U.S. Census Bureau. 5,964,526 (15.8%) of California's population is 65 years or older with projections from the California Department of Finance that by 2040, 23.1% of Californians will be 65 years or older.

California also leads the nation in the number of hospices in the state, with 2,445 hospices as reported in CASPER on 4/7/2024. In addition, California has the unique and troubling distinction of being the state with 36 hospices per 100,000 population, the highest number in the country.

The California Hospice and Palliative Care Association (CHAPCA) is a 501(c)3 organization located in Sacramento, CA and established as a statewide hospice provider member organization. The number of hospice organizations has grown exponentially in recent years, and many hospice providers have had experiences with one of the three accrediting organizations with *deemed status* for hospice.

The proposed rule, issued by the Centers for Medicare and Medicaid Services (CMS) on February 15, 2024, includes a number of provisions to strengthen the oversight of AOs by CMS. The proposed rule addresses conflicts of interest, establishes consistent standards, processes, and definitions, and updates the validation and performance standards systems. Changes proposed in this rule impact all three Accrediting Organizations (AOs) that provide deemed status surveys for hospices, including initial Medicare certification surveys, recertification surveys and complaint surveys. We believe that additional oversight of the three accrediting organizations is crucial for the three AOs approved to offer *deemed status* surveys for hospices. CHAPCA's comments follow.

A. Unannounced Surveys

CHAPCA supports the proposal for a definition of “unannounced survey.” We believe that a strong message to providers about the intent of an unannounced survey must be stated strongly. There are instances in California where, when the surveyor(s) arrive, there is not a staff member in management in the office to provide surveyors with the information they need at the time of the survey. In fact, for some surveys, there is no one in the office, causing the survey to be rescheduled.

CHAPCA Recommendation

- **W-2 management employee on site at all times when the office is open:** CHAPCA requests that CMS include a provision in the final rule to require a hospice provider awaiting a survey, including both surveys from the State Agency (SA) and the accrediting organization (AO), to have a duly authorized W-2 employee member of management onsite at the facility during office hours every day when the office is open. This individual must be functionally knowledgeable of company operations and able to provide access to the materials the surveyors need at the time of survey. This will preclude some hospices from delaying the survey or limit the information available to the surveyor. In addition, the W-2 requirement will preclude independent ‘consultants’ from being on site and acting as a representative of the owner.
- **Add to managing employee category in the 855A:** To strengthen this requirement, we also request that CMS include the “authorized W-2 employee” as a category on the 855A, where a provider must report this person as a managing employee. Both SAs and AOs, as well as CMS, would be able to monitor the individuals who are on the “managing employee” list and serve in that capacity for multiple hospice providers. Those who manage a high number of providers in an area may indicate the need for further investigation into possible fraudulent activity.
- **Delay of survey start time:** We also urge CMS to implement requirements for AOs that the start time of the review process must not be delayed by more than 30 minutes after the reported opening time at the hospice. If that timeframe is exceeded, the survey must be rescheduled, and the hospice would be added to the bottom of the schedule to be surveyed at some future date.

B. Conflict of Interest Policies

CHAPCA fully supports the efforts of CMS to add details to the Conflict of Interest (COI) policies for AOs. This will protect the integrity of the survey process and provide guidance to surveyors.

C. AO Crosswalk Requirements

We support the efforts of CMS to require a crosswalk between the CoPs and AO standards and urge CMS to make these crosswalks public to ensure providers have complete and accurate information related to the CoPs when choosing between using an SA or AO to meet their certification needs.

D. Require AO Surveyors to Take the CMS Online Surveyor Basic Training

CHAPCA fully supports the requirement that AO surveyors and SA surveyors take the same CMS online surveyor basic training, as is outlined in the HOSPICE Act, and included in the Consolidated Appropriations Act of 2021. We know that the surveyor training was updated with the release of the revised State Operations Manual – Appendix M, Hospice in January 2023. At that time, the focus of the survey included four core conditions of participation and the surveyor training mirrors that change. CHAPCA urges CMS to continue to update the surveyor training materials as new regulations are finalized, to ensure that the correct and most up-to-date information is available to surveyors and ensure that surveyors have completed the training and passed the competency test.

Additional Comments, Questions and Concerns on the Medicare Certification Process Based on the California Experience

CHAPCA is in a unique position to comment on the CMS oversight function for hospice accrediting organizations. California has been the epicenter of hospice fraud and beneficiary harm for the last several years, and the California Auditor’s Report, published in 2022, shared a troubling lack of controls among California’s state agencies which have “created the opportunity for large-scale fraud and abuse.” Accrediting organizations have been actively involved in initial Medicare certification surveys and recertification surveys for some time. The volume has been intense, as we show below. CHAPCA provides an educational and advocacy role with the State legislature and State agencies involved in the licensure and certification of hospices.

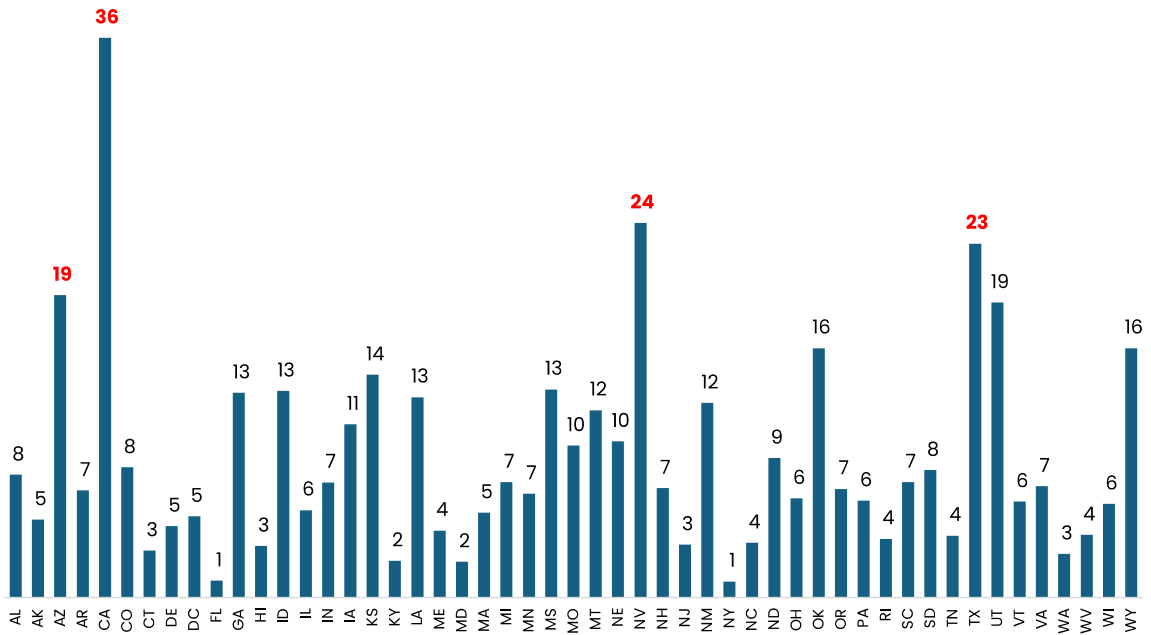
California State Auditor’s Report: The California State Auditor published a report on March 29, 2022, entitled [California Hospice Licensure and Oversight](#) -- *The State’s Weak Oversight of Hospice Agencies Has Created Opportunities for Large-Scale Fraud and Abuse*. The report confirms that California is using the three national accrediting organizations approved by Medicare for hospice accreditation to conduct licensure surveys, in addition to initial Medicare certification surveys. Since the State hospice licensure moratorium began in 2022, AOs have not done licensure surveys in CA.

Based on the concerns outlined in the CA State Auditor’s Report, the California legislature established a moratorium on new hospice licenses, effective January 1, 2022. The number of providers with a hospice license grew before the moratorium took effect and by January 1, 2022, the number of licensed hospices awaiting initial certification surveys was 2,606. The California moratorium is still in effect and as of April 10, 2024, there are 317 licenses awaiting initial Medicare certification surveys. CHAPCA is supportive of a continued moratorium on the issuance of new hospice licenses at this time.

We believe that decisive action by CMS is not only warranted, but also desperately needed so that Medicare beneficiaries and their families are not harmed by no care, very poor care, or the inability of the Medicare beneficiary to receive needed care because of a [fraudulent hospice election](#). The following charts, tables, pictures, and questions reflect our reality and our experience. We implore your review of the materials that follow.

► Medicare Certified Hospices in California by the Numbers

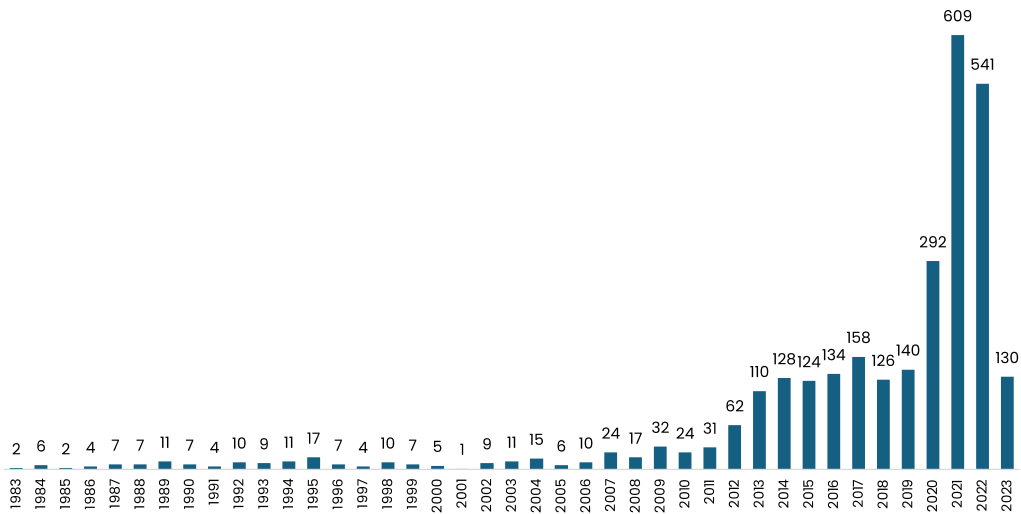
Medicare Certified Hospices by State per 100,000 Medicare Eligible



Source: CMS, QCOR, CASPER (04/07/2024); CMS, Monthly Medicare Enrollment by State, March 2024.

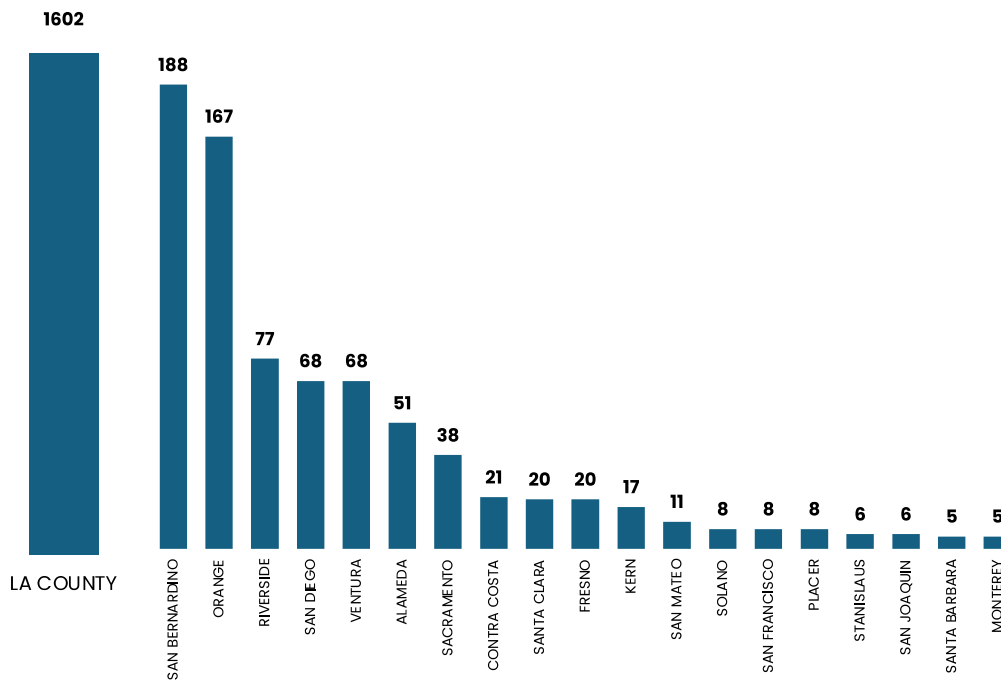
Growth in Medicare Certified Hospices in California

Medicare Enrollment
1983-2023



Source: CMS, The Provider of Services File (POS) - Internet Quality Improvement and Evaluation System (IQIES) - Home Health Agency (HHA), Ambulatory Surgical Center (ASC), and Hospice Providers data, as of April 1, 2024; accessed April 11, 2024.

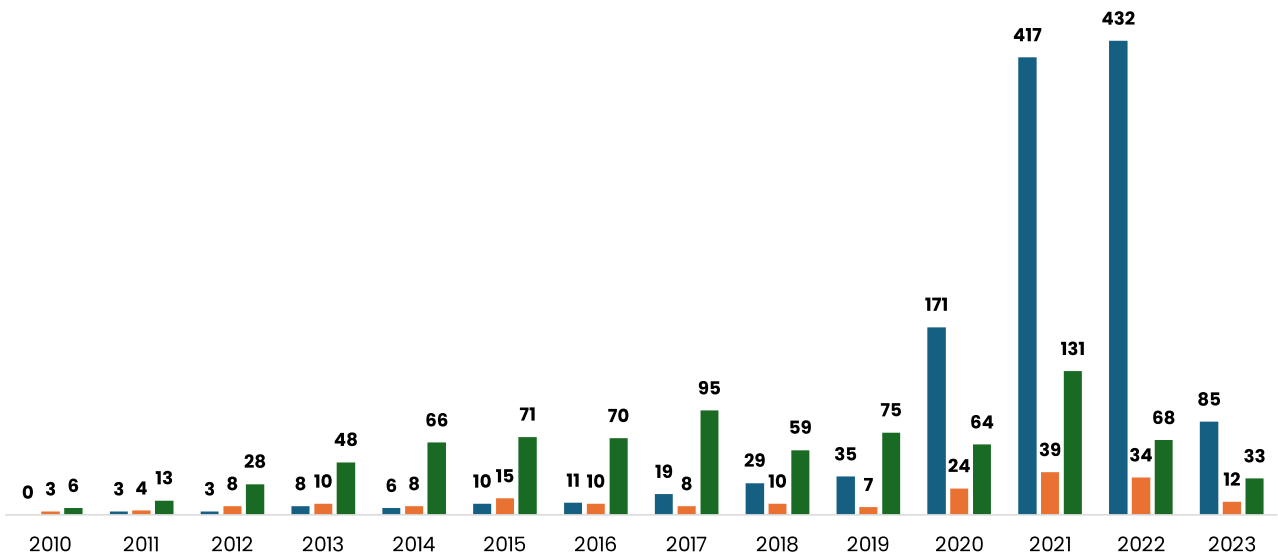
California Medicare Certified Hospices by County



Source: CMS, The Provider of Services File (POS) - Internet Quality Improvement and Evaluation System (IQIES) - Home Health Agency (HHA), Ambulatory Surgical Center (ASC), and Hospice Providers data, as of April 1, 2024; accessed April 11, 2024. Counties with under five enrolled Medicare-certified hospices not included.

California Hospices Certified by Accrediting Organization 2010-2023

■ ACHC ■ CHAP ■ JC



Source: CMS, Provider of Services File (POS) - Internet Quality Improvement and Evaluation System (iQIES) - Home Health Agency (HHA), Ambulatory Surgical Center (ASC), and Hospice Providers data, as of April 1, 2024, accessed April 11, 2024.

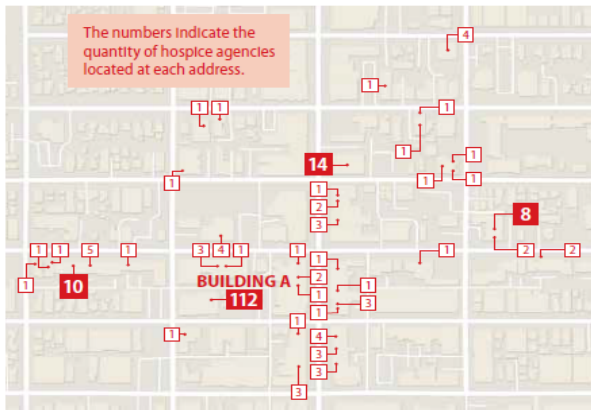
► Locations – Address, Site Visit, Colocation

CHAPCA has done significant research on the characteristics of Medicare certified hospices in California, reviewing addresses, number of hospices at one address, hospice address pictures and evaluation of building and occupancy permits.

Addresses: Applications for initial Medicare certification show many addresses with multiple hospices. There are thrift stores, burned out buildings, auto body shops and vacant lots whose addresses have been used for hospice locations. In addition, this cluster map in Van Nuys, California indicates the large number of hospice agencies in very close proximity.

Clusters of Hospices in March 2022 in the California Auditor’s Report:

Figure 8
Suspiciously High Numbers of Hospice Agencies Are Clustered in Specific Locations in Los Angeles County



There are business offices for 210 active hospice agencies located within 1 mile of each other in Van Nuys in Los Angeles County. We found similar clusters in the cities and communities of Glendale, Burbank, and North Hollywood in Los Angeles County. We reviewed data for the Sacramento area, the San Diego area, and the Bay Area and did not identify similar clusters of hospice agencies at a single address.

Source: Public Health’s licensing data.

Building A appears to be a standard commercial office building. It lacks any exterior signage indicating any hospice agencies are housed inside. The large number of hospice and home health agencies that the licensing data show as located in this building and other businesses located in it appears to exceed its capacity. County building records show that the building has 22,500 square feet of space, and even less space is available for business offices after excluding the common areas of the building. Thus, based on the size of the building and our observations from visiting the building, there does not appear to be space for more than a total of 150 hospice agencies, home health agencies, and other businesses in the building.

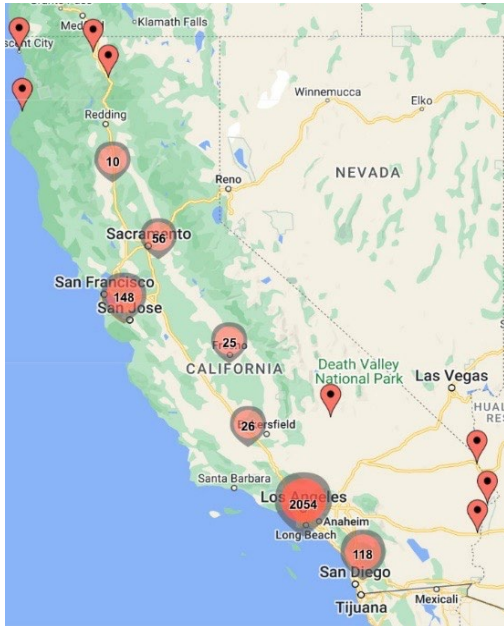
Clusters of Hospices in LA County, CA

- ▶ 210 active hospices located within 1 mile of each other in Van Nuys, CA (March 2022 data)
- ▶ Similar clusters in Glendale, Burbank, and North Hollywood
- ▶ NO similar clusters found in Sacramento, San Diego, or the Bay Area

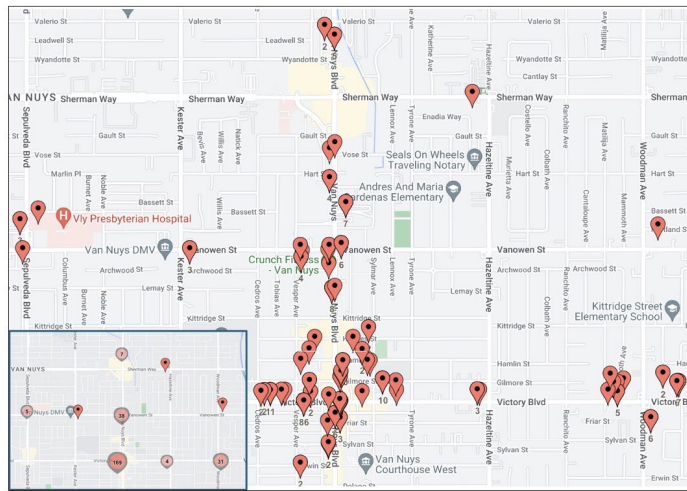
- ▶ Source: [California Auditor’s Report on Hospice](#), March 29, 2022

The charts below show the clustering of hospices in Van Nuys and in California as a whole, as of April 2024. The clustering of hospices in major metropolitan areas has increased and can now be found outside of Los Angeles County.

**Number of Hospices in Metropolitan Areas in California
April 2024**

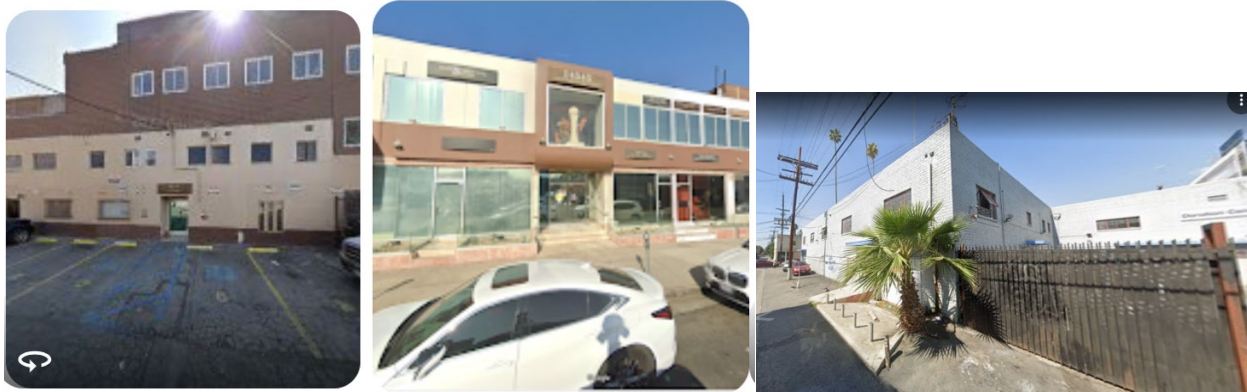


**Cluster of Hospices in Van Nuys
over 200 Medicare certified hospices
in a 1.5 mile radius**



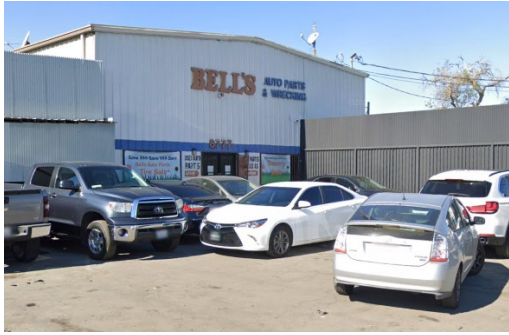
Pictures of Offices:

These pictures are from 14545 Friar Street, Van Nuys, CA, home of 84 Medicare-certified hospice providers and 37 Medicare-certified home health agencies. CDPH licensure data as of March 15, 2024, reports that 22 additional hospices and 52 home health agencies at this address are licensed-only, which means they could be Medicare certified at any given time.



Building on Friar Street, Van Nuys for 84 hospices and 37 home health agencies

Pictures of other addresses in California used in initial Medicare certification applications:



Auto body shop address used for hospice location



Address is a banquet company and a Wellness Solutions store



Address is also a burrito restaurant



Multiple hospices at this address in Van Nuys



Building on this lot was torn down in 2022, but yet the address was used as a hospice location. The provider moved to a new location and changed the address on the business licensing forms with the CA Secretary of State. The CMS address information still reflects the vacant lot. The new construction has nothing to do with a hospice location.

Questions for CMS about locations and buildings:

1. Why were hospices in CA licensed and Medicare certified through accreditation without the addresses, including suite numbers, checked?
2. Did the surveyor or survey team enter the building and go to the office of the hospice seeking certification?

3. What location data was checked by the accrediting organization during the initial certification process? CHAPCA suggests that the following should be checked. These items are recommended for inclusion in Task 1 – Pre-Survey Preparation.
 - a. Does the building listed in the application have an occupancy permit which specifies how many offices can be located at this address?
 - b. Does the hospice have a verified, fully functioning, signed lease?
 - c. Can the AO or SA confirm that the address is not an executive office space/shared office space? Did the provider purchase the address for \$40 per month?
 - d. Is there functional space for staff, team meetings, and patients and families to meet?
4. Other items recommended for inclusion in Appendix M – Task 1
 - a. Secretary of State incorporation documents requested and reviewed.
 - b. Incorporation document matches the location and address of office on certification/recertification documents.
 - c. Business license is available for review.
 - d. Building occupancy permit requested and reviewed.
 - e. Compliance with [Corporate Transparency Act](#)
5. Items that could be added to Appendix M – Task 6 Exit Conference
 - a. Surveyors may share information on Secretary of State incorporation documents, building occupancy permit information, and possible state and federal tax liens.
 - b. Surveyors may ask questions about the number of hospices at the same address as the one being surveyed.
6. Is there a **signage** requirement? Size of sign, size of font, readability, location on the building interior and exterior? CHAPCA has anecdotal reports that some hospices have one hospice per office cube and the name of the hospice is placed on the cube with Velcro, to be moved from one cube to another for the survey process.
7. What is the review process to **check the current address** and determine whether the provider has moved? If the provider has moved and has not notified CMS, what is the process or penalty if that information is not up to date?

The State of California is writing emergency regulations to include some of the above questions. We believe that it is not only the state licensure requirement that should be considered, but also the initial Medicare certification survey and recertification or complaint surveys.

► **State and Federal Tax Liens**

CHAPCA has had reports of hospices who remained Medicare certified even though the hospice was listed on the [CA Secretary of State website](#). When searched using the word “hospice,” the website identified more than 1,000 hospices with a state or federal tax lien. One example was a hospice who owed more than \$400,000 to the IRS for failure to make payments for three quarters in 2023. Another had a lien for payments owed to the US Small Business Administration. There are just two of many examples.

As a follow-up to the June 2008 U.S. General Accounting Office (GAO) Report “*Medicare: Thousands of Medicare Providers Abuse the Federal Tax System*”, Congress enacted reforms providing authority to identify fraudulent providers by authorizing CMS to

collaborate with the IRS to determine whether providers applying to enroll or re-enroll in Medicare have failed to file Federal tax returns or have delinquent tax debts.¹

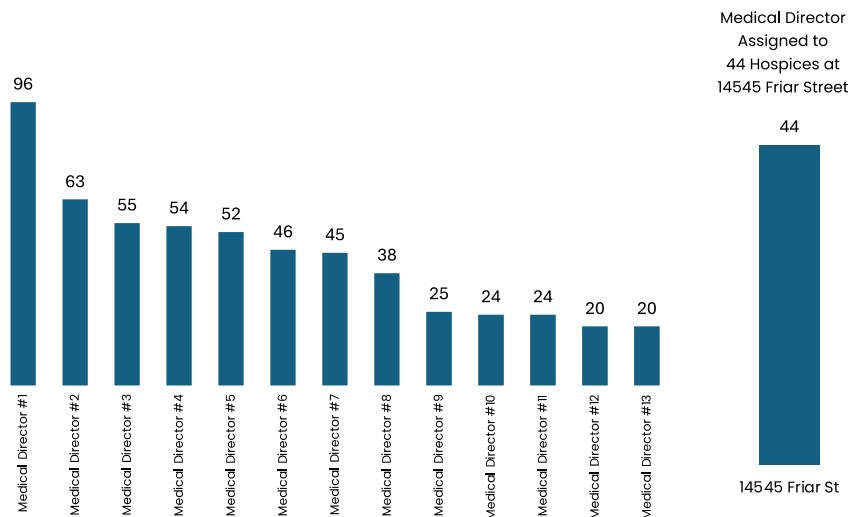
Questions for CMS:

1. Is there a process in place at CMS to check the status of state or federal tax liens during the review of the initial certification survey or recertification survey?
2. How is CMS implementing the CMS-IRS data match to identify fraudulent providers, as cited above?
3. If the provider has a tax lien, is there a process in place to pause the hospice provider’s Medicare certification or recertification enrollment until the debt is satisfied?

► **Physicians in Hospice**

CHAPCA has done significant research on the physicians who serve in the state’s hospices as the hospice medical director. The California Department of Public Health has aggregated hospice medical director data. The chart below shows the results:

Medical Directors Serving Numerous Hospices Under Different Ownerships



Source: California Department of Public Health (CDPH)

We believe that the implementation of hospice physician and attending physician enrollment in PECOS, effective May 1, 2024, will be important to identify hospice physicians who are serving more than one hospice. It is understandable that an attending physician may be listed in a number of hospices, given their role as a patient’s attending.

Medical Board of California: However, CHAPCA remains very concerned that basic information about the physician, regardless of their role in hospice, is not being checked for compliance and the possibility of adverse rulings. Information is available from the [Medical Board of California](#) for all licensed physicians in the state. If there is a requirement that the

¹ Public Law 111-192, Section 103, Establish a CMS-IRS Data Match to Identify Fraudulent Providers. Additional information at GAO report at <https://www.gao.gov/assets/gao-08-618.pdf>.

hospice confirm that all physicians employed by or under contract with the hospice are duly licensed in the state, these incidents are among many that demonstrate that the information is not being checked:

- The board suspended the hospice physician’s license to practice medicine in the State of California in 2019, before he acted as a patient’s attending physician in 2023. The Medical Board cited a MediCal fraud indictment; however, the courts are currently hearing the case and there is not yet a final court decision. The courts are hearing the case now.²
- The board suspended the license of a California physician for excessive opioid prescribing. The ruling stated that the “Respondent is prohibited from ordering, prescribing, dispensing, administering, or furnishing any Schedule II controlled substances as defined by the California Uniform Controlled Substances Act, *except to patients who have been admitted to hospice care.*”³

Questions for CMS and possible inclusion in the information reviewed during the survey process:

1. **Status of physicians as employees or contractors:** Who in the hospice agency is responsible for checking the status of physicians working or under contract with the hospice? Who is responsible for creating the log and continuing to update the information?
2. **PECOS enrollment:** Does the surveyor check on documentation logs from the provider for PECOS enrollment or a valid opt-out affidavit for all hospice physicians and all attending physicians? Is this task on the surveyor’s list while completing the survey? How often is the enrollment status checked? Where is the physician enrollment log kept?
3. **Managing employees:** Is the surveyor checking the 855A either as a pre-survey task or while on site to ensure that at least the executive director/CEO and the hospice medical director are listed as managing employees?
4. **Confirmation of licensure:** Does the hospice confirm California licensure for all physicians who are employed by or under contract with the hospice? Will the SA or AO confirm current licensure information documentation and when the licensure information was last checked?
5. **Adverse action on a license:** What is the process when an adverse action has been taken by the state medical board or licensure suspension has been identified? What documentation supports that the hospice has checked with the Medical Board of California?
6. **Medical director for multiple hospices:** Does the hospice review the physicians employed by or under contract with the hospice to determine whether the physician is serving as the medical director for multiple hospices? Does the hospice know where the information is available? Can CMS add this to the requirements for the AO and SA to check during the survey process?

CHAPCA has prepared these questions about physicians in hospice after reviewing physician designation records for hospice medical directors and reviewing a sample to

² Medical Board of California, [DCA - Search Details](#), Accessed April 11, 2024

³ Medical Board of California, [DCA - Search Details](#), accessed April 10, 2024

confirm current state licensure. It is clear that this information is not being checked at all or done on a very limited basis.

► **Five Initial Patients**

CHAPCA has received anecdotal reports that some hospices are using the same five patients as they prepare for their initial Medicare certification survey.

Questions for CMS:

1. Is there any way to check the names/MBI numbers of patients to ensure that these five patients are unique to the hospice being surveyed prior to or during the initial survey?
2. Is the surveyor required to visit at least one of the five patients during the survey process?
3. There should be an established process for these five patients, which includes billing, if allowed, for them within 30 days after the CCN# is granted.

► **Complaint Investigations**

The State Auditor's report comments on complaint investigations as well:

Accreditors can investigate less serious complaints about deemed-status hospice agencies, but federal law requires the State to investigate substantial allegations of noncompliance for such agencies. If Public Health receives complaints about deemed-status hospice agencies that contain less serious allegations, it may advise the complainant to file the complaint with the accreditor or ask the complainant's permission to release the information to the accreditor. For more serious complaint allegations about deemed-status hospice agencies, Public Health must seek approval from CMS to perform an investigation that assesses the hospice agency's compliance with federal standards.

Recommendation from CHAPCA: There is merit in having the AOs handle some less serious complaints. It will also be important to have consistency in how complaints are handled and adjudicated. In order to determine which complaints are handled by the AO and which ones should be handled by the SA, CMS should provide guidance to AOs about the criteria for SA complaint review.

► **Communication Process when the AO Terminates the Certification of a Hospice Provider or Accreditation is Discontinued**

CHAPCA is aware of a number of hospices that have lost their accreditation. In some cases, the provider will not allow the surveyors to enter the building; in other cases, there is an inability of the hospice to meet the certification requirements. Some hospices have decided not to continue to pursue accreditation for the recertification process. In some cases, the hospice provider continues to bill, even after refusing the reaccreditation process or without a deemed accreditation in place.

In review of accreditation status at cms.qcor.gov, some hospices who have been terminated are listed as Non-Accredited, but in reality, those hospices have had their deemed status revoked.

Questions for CMS

1. What is the process when an AO does not recertify the hospice during the recertification process?
2. What is the process for a provider to notify the AO of their decision to discontinue reaccreditation with the AO? Are the deadlines for notification available in regulations?
3. Is there a process for Medicare claims payments to be discontinued, as of a particular date if the providers' deemed status certification changes? Does the 30-day requirement for the hospice to transition their patients to another Medicare certified hospice apply in this situation?
4. How will CMS, referral sources, and the public be notified when the agency has lost their accreditation or discontinued it?

► AO Websites and Marketing Materials

CHAPCA has had a substantial number of provider comments and complaints about misleading statements, inaccuracies, or promises that cannot be kept from the AOs. Some examples that have been shared with CHAPCA by California provider members include:

1. One AO offers accreditation with a distinction in Telehealth. Hospice is included in the list of provider types that could earn this distinction. There is no mention that telehealth communication must be HIPAA compliant. In fact, in the list of possible platforms, many are not HIPAA compliant. The special distinction in telehealth is advertised for hospice, even though the FY 2024 Hospice Wage Index final rule, the telehealth option for Routine Home Care was eliminated as of the end of the Public Health Emergency on May 11, 2023, with the exception of the use of audio and visual telehealth services for the Hospice face to face encounter.
2. One AO offered a virtual survey option, stating that a "Virtual Survey is conducted using a virtual hosting solution that allows an audio, video, and camera web-based platform for virtual meetings, including, but not limited to: GoToMeeting, Microsoft Teams, Skype, Webex, and Zoom. Virtual surveys are offered to certain organization types, depending on the parameters set by ACHC, state licensure requirements, and regulations of the Centers for Medicare & Medicaid Services (CMS). Virtual surveys review the same material as an on-site survey, and the organization needs to show compliance with all ACHC standards, and state and federal requirements. Virtual surveys can be announced or unannounced, depending on the program."
3. One AO has posted information on their website, newsletter and LinkedIn that states the following:
 - The CMS Hospice Final Rule 2021 requires state agencies to implement a range of remedies for noncompliance, including monetary sanctions. An XXXX [name of AO] survey resulting in non-compliance does not result in

sanctions, but an opportunity to correct condition-level deficiencies and undergo another survey to confirm compliance.⁴

CHAPCA members were confused and concerned about the wording of this marketing material and many called the CHAPCA offices to ask whether it was true that if you were accredited by this AO, you would not have enforcement remedies or sanctions.

Questions for CMS

1. Does CMS have an approval process for website content or marketing materials?
2. When regulations or sub regulatory guidance changes that might impact hospice regulations, is there communication from CMS to the AOs informing them of the changes and recommending review of their marketing materials and websites?
3. If a hospice has a concern about marketing materials or possible inaccurate information on the website, where would they go to ask questions?
4. Is there a penalty or sanction for the AO from CMS if the Medicare hospice regulatory information is not accurate and fails to be removed?

Conclusion

Thank you again for the opportunity to provide comments on CMS's proposed regulation regarding additional oversight of the AOs. We hope that sharing some of the survey process experiences in California will be helpful to the issues CMS will consider as the final rule is drafted and even beyond this rule. We also believe that the items and documents that should be reviewed, and have not been, are directly related to the growth in providers and the ease of effort it takes to get Medicare certified as a hospice. To address some of the hospice fraud and beneficiary harm issues, the survey process is key. Having a surveyor on site, in the office, is key. State and Federal partners, as well as CMS contractors and other stakeholders, are all part of the solution.

CHAPCA is ready to help, answer questions, dig deeper for more examples, and identify additional concerns as they arise. We do not want other states to have the experience of California hospice growth and plead with CMS to take decisive action. If you have any questions concerning these comments or would like to discuss these issues further, please contact CHAPCA's President and CEO, Sheila Clark at PresidentCEO@calhospice.org.

Sincerely,

Sheila Clark
President and CEO

⁴ [Post](#) | [Feed](#) | [LinkedIn](#)
[Surveyor Newsletter | Volume 2022, No. 1 \(flippingbook.com\)](#)

