The Heritage Foundation

Robert F. Kennedy, Jr.,
Secretary
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Docket ID: CMS-2026-1156-0002

File code: CMS-1851-P

Re: Medicare Program: Fiscal Year 2027 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Program Requirements

On April 6, 2026, the Centers for Medicare and Medicaid services (CMS) published the proposed rule, "Medicare Program; FY 2027 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Program Requirements."[1] In it, CMS notes that "The Assisted Suicide Funding Restriction Act of 1997 (Pub. L. 105–12, April 30, 1997) prohibits the use of Federal funds (through Medicare, Medicaid, and other Federal programs) to provide or pay for any health care item or service, or health benefit coverage, for the purpose of causing, or assisting to cause, the death of any individual including mercy killing, euthanasia, or assisted suicide, sometimes referred to as 'medical aid in dying' (MAID)."[2] CMS goes on to state, "because of State requirements (where MAID is allowed under State law) that a patient be terminally ill, we are interested in hearing from hospice providers and other interested parties about any issues that may arise when a Medicare hospice patient requests MAID."[3]

In response to CMS's request for comment, these comments address potential legal and policy issues that may arise when a Medicare (or Medicaid) hospice beneficiary requests assisted suicide and recommendations for stronger oversight.

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[1] U.S. Centers for Medicare & Medicaid Services, Medicare Program: Fiscal Year 2027 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Program Requirements, CMS-2026-1156-0002, Regulations.gov, https://www.regulations.gov/document/CMS-2026-1156-0002.
[2] CMS, CMS-2026-1156-0002, at 17363. The Assisted Suicide Funding Restriction Act of 1997 is codified at 42 U.S.C. §§ 14401–08.

[3] CMS, CMS-2026-1156-0002, at 17363.

Recommendations

1. CMS should use terminology that is consistent with statute. Specifically, the term "assisted suicide," which appears in The Assisted Suicide Funding Restriction Act of 1997 ("ASFRA"), should be utilized instead of the term "medical assistance in dying," or "MAID."[4]

2. Implementing many restrictions on funding of assisted suicide requires that CMS be able to accurately identify instances of assisted suicide in jurisdictions where the practice is lawful. That determination may be feasible in states whose death certificates expressly identify assisted suicide as the cause or manner of death. Where state death certificates do not do so—for example, where the decedent's underlying terminal illness is recorded instead—CMS should require that any hospice provider or other provider of care at the time of death, as a condition of reimbursement, submit an attestation under penalty of perjury verifying that the beneficiary did not die through assisted suicide. The legalization of assisted suicide in any state should trigger greater scrutiny from CMS as it relates to federal reimbursements, particularly for hospice services.

3. Generally, Medicare and Medicaid pays a *per diem* rate for each day a beneficiary is enrolled in hospice care. ASFRA, however, prohibits the federal government from providing or paying for "any health care item or service furnished for the purpose of causing, or for the purpose of *assisting in causing*, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing" or from paying for any health benefit coverage that includes coverage of the same.[5] Accordingly, if a person is on hospice care in a jurisdiction where assisted suicide is lawful, none of the *per diem* payment may go in any way to provide or pay for even any indirect assistance in the assisted suicide. Given the complexities of determining the particular apportionment and utilization of the *per diem* on days in which a person in hospice care is participating in preparation for or participation in an assisted suicide, the most viable method of implementing this restriction is to disallow the *per diem* for days in which such participation or preparation occur. Such a policy aligns with the letter and the spirit of the ASFRA by reducing the likelihood that federal funds are used to inadvertently finance services associated with the provision of assisted suicide.

Medicare also often pays a Service Intensity Add-On ("SIA"), which are additional funds provided to cover extra clinical care in the last seven days of a hospice patient's life. Hospice providers should be ineligible to receive the SIA when the patient's death is the result of assisted suicide.

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[4] *See, e.g.,* 42 U.S.C. § 14402(a) and (c).
[5] 42 U.S.C. § 14402(a) (emphasis added).

4. CMS should identify and explicitly disallow payment of ASFRA-restricted funds for the broad range of items or services that are used to directly or indirectly facilitate assisted suicide. At a minimum, this would provide further clarity concerning what constitutes the facilitation of assisted suicide in the context of federally funded programs. Such ASFRA-restricted items or services include, but are not limited to, the following:

A. The provision of the facility or setting within which assisted suicide is administered. Facilities or settings that receive federal funds, including Medicare and Medicaid, cannot provide or assist in assisted suicide.
B. The transfer and preparation of transfer of patients to a non-federally funded facility for the purpose of accessing assisted suicide.
C. The storage of drugs that are utilized for the purposes of assisted suicide.
D. The performance or facilitation of mental health evaluations, required by some states, for the purpose of ensuring mental fitness and capacity to consent to assisted suicide.
E. The instruction, training, or supervision of clinical practices relating to the administration of assisted suicide conducted within a federally-funded teaching hospital or other educational program receiving ASFRA-restricted funds.
F. Advocating for assisted suicide within a federally funded teaching hospital or program receiving ASFRA-restricted funds.
G. The prescribing, dispensing, or administration of anti-nausea or other medications intended to facilitate the ingestion or effectiveness of lethal drugs for the purposes of assisted suicide.
H. The facilitation, coordination, or arrangement of consultation with any external physician or provider for the purpose of evaluation, recommending, or supporting assisted suicide.

Conclusion

ASFRA is clear that no ASFRA-restricted funds may be used to, in any way, directly or indirectly, facilitate or assist in any assisted suicide. This prohibition is strong and calls for strong measures to ensure that Congress' restriction is followed. Lesser restrictions risk the use of ASFRA-restricted funds in ways that could directly or indirectly facilitate assisted suicides in violation

Sincerely,

Liana Graham
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