

Florida TaxWatch Report

**FLORIDA'S
CERTIFICATE OF NEED
PROGRAM DELIVERS
HIGH-QUALITY
HOSPICE CARE**

MAY 2023





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DEAR FELLOW TAXPAYER,

Hospice services are critical for a highly vulnerable population. Unlike other consumer ventures, individuals and families seeking hospice services have limited time and emotional capacity to “shop around” for the right fit. To protect Floridians at the end of life, Florida administers a Certificate of Need (CON) program to carefully plan and develop the availability of hospice services.

The Certificate of Need program only approves new hospice programs if an area’s growth rate suggests there will be an unmet need—as determined by a population-based formula—for hospice services. If an area has an unmet need, providers compete to launch new hospice programs. This process guides manageable growth of providers, making it easier for Florida to monitor their quality and ensuring providers have a sufficient number of patients to sustain their business.

Nationwide, many states have repealed their hospice CON programs, and during the 2019 Legislative Session, Florida considered doing the same. The repeal of hospice CON programs is not without consequences, as exemplified by the challenges faced in California. In 2022, the State Auditor of California found that the absence of hospice oversight resulted in rampant fraud. Meanwhile, within the same report, Florida was lauded as an effective model.

Florida TaxWatch conducted an in-depth study of hospice care in Florida in 2018, recommending that the CON program remain a tool for ensuring steady growth of quality hospice providers. Florida TaxWatch revisits the topic, with a special focus as to the effects the CON program has upon the delivery of hospice services in Florida as well as the potential ramifications of following suit with other states by amending or repealing the CON program. Florida TaxWatch is pleased to present this report and its findings and looks forward to engaging policymakers and hospice regulators.

Sincerely,

Dominic M. Calabro
President & Chief Executive Officer

EXECUTIVE SUMMARY

The development of hospice programs in Florida is regulated by a Certificate of Need (CON) program. Certificate of Need programs allow the entry of new service providers if the local community has a demonstrated need. Florida is one of 13 states and the District of Columbia that continues to utilize a CON program for the development of hospice services. As Florida's population increases and ages, it will become more critical to facilitate the growth of hospice services in the way that best serves hospice patients and protects the interests of Florida taxpayers.

The Certificate of Need program has allowed Florida to develop a unique landscape of hospice providers that grows proportionately to the needs of the state. From 2010 to 2020, Florida's number of hospice providers grew by 9.3 percent, closely resembling its population growth (7.4 percent). Florida has the second most patients nationwide—about 154,500 patients—with few providers, ranking 30th for its number of hospice providers.

Although a relatively low number of providers provide for this number of patients, the quality of hospice services in Florida surpasses the quality demonstrated in many other states. The U.S. Centers for Medicare and Medicaid Services measures the overall quality of hospice care with two indicators --- the Hospice and Palliative Care Composite Process Measure and the Hospice Care Index Overall Score. Compared to other states, Florida's performance measured by the Hospice and Palliative Care Composite Process Measure ranks 6th and its score for the Hospice Care Index Overall Score is tied for 3rd.

In the absence of CON regulations, states have demonstrated prolific growth of hospice providers. The more hospice providers a state has, the harder it becomes to monitor for quality and safeguard against fraud. A large number of providers also makes the state more susceptible to fraud since there is only a limited number of eligible hospice patients.

California effectively illustrates the risks of amending or repealing a hospice CON program. California has more than one thousand hospice providers, and state auditors found that the state is likely experiencing large-scale hospice fraud. Hospice fraud threatens the safety of California's residents and wastes taxpayer dollars. The California Attorney General estimates that in Los Angeles County alone, hospice agencies overbilled Medicare by \$105 million and the state's Medi-Cal by \$3.1 million in 2019.

Florida's hospice delivery system works. The Certificate of Need Program has intentionally planned and

Recommendation

Florida TaxWatch recommends the CON program be retained in statute, and that hospice regulators continue to identify ways that Florida hospice providers can continue to provide high quality care for Floridians.

developed a network of high-quality, readily available hospice providers. Florida TaxWatch recommends the CON program be retained in statute, and that hospice regulators continue to identify ways that Florida hospice providers can continue to provide high quality care for Floridians.

INTRODUCTION

Hospice services provide care for patients at the end of life, offering a continuum of palliative and supportive care that is paid in-part by Medicare dollars.¹ To be eligible for hospice services, a medical professional must certify that a patient’s condition is terminal if the illness follows its normal course, and patients must waive access to life-prolonging remedies. Hospice care is an invaluable means for protecting the quality of life through the end of life. Further, hospice care helps the families of patients, offering emotional support through grief counseling and respite for caregivers, as well as financial relief by limiting the need for more expensive alternative treatments.²

In Florida, hospice providers are regulated by the state’s Certificate of Need (CON) program, which monitors and regulates the growth of hospice providers. Under this program, Florida has successfully developed an effective hospice delivery system. Florida ranks high among the states for the quality of care delivered and witnesses a high level of utilization by traditionally hard to serve communities. Although the CON Program helped facilitate this success achieved by Florida, the practice has come under question nationwide.

Critics of the CON process argue that the average patient in a CON state has access to fewer hospitals,³ fewer hospice care facilities,⁴ fewer dialysis clinics,⁵ and fewer ambulatory surgery centers (ASCs).⁶ Critics also maintain that CON does not distribute care where it is most lacking, and that many (primarily rural) patients must travel farther for care.⁷ Further, critics maintain that the CON process enables incumbent medical facilities to “stymie” smaller and less-powerful competitors.⁸ This had led to efforts on the part of policymakers in more than a dozen states looking to strip away the barriers to health care (including CON) during the last year alone.

Florida TaxWatch undertakes this independent research project to examine how the CON program influences the delivery of crucial hospice services in Florida, and amid the national trend of reforms and repeals, to consider

the potential consequences to Florida if the state were to repeal the CON process for hospice providers.

FLORIDA’S CERTIFICATE OF NEED PROGRAM

In Florida, hospice providers are regulated by the state’s Certificate of Need (CON) program. A CON program monitors and controls the establishment of new health service institutions, such as hospitals, hospices, and nursing homes, by using a formula that calculates whether a community requires additional health services. As of January 2023, Florida uses a CON program to regulate the following types of institutions: hospices; freestanding inpatient hospice facilities; skilled nursing facilities; and intermediate care facilities for the developmentally disabled.⁹

“The CON process regulates the number of hospice programs that can operate in Florida and requires programs to demonstrate their expertise, financial capacity, and commitment to serve terminally ill individuals and their families as well as the communities in which they live.” – Office of Program Policy Analysis and Government Accountability (OPPAGA)¹⁰

To determine whether there is a need for additional hospice programs, Florida is divided into 27 service areas that are assessed twice each year through a process known as “batching cycles.” A service area is only granted a CON if the projected number of hospice patients for the upcoming year surpasses the total capacity of all existing programs by 350 or more hospice patients. If there is a demonstrated need, providers compete to launch a new program. For the February 2023 batching cycle, none of the service areas has demonstrated a net need for additional hospice programs.¹¹

The competitive batching cycle is particularly important for securing high quality hospice providers. While consumers typically benefit from marketplace competition, hospice care is delivered during an especially vulnerable time

1 See, Florida TaxWatch, Evaluating Hospice Certificate of Need in Florida, April 2018.

2 Melissa Aldridge, Ab Brody, Peter May, Jaison Moreno, Karen McKendrick, and Lihua Li, Hospice Saves Costs for Families: Evidence from 16 Years of Medicare Survey Data, September 2021. See also, NORC at the University of Chicago, “Value of Hospice in Medicare,” March 2023.

3 Thomas Stratmann and Jacob W. Russ, “Working Paper Do Certificate-of-Need Laws Increase Indigent Care?” 2014.

4 Melissa D A Carlson, Elizabeth H Bradley, Qingling Du, R Sean Morrison, “Geographic access to hospice in the United States,” Journal of Palliative Medicine, November 2010.

5 Thomas Stratmann and Christopher Koopman, “Entry Regulation and Rural Health Care,” February 2016.

6 Ibid.

7 Ibid.

8 Matthew Mitchell, “It’s Time for States to Ditch Certificate of Need Laws,” U.S. News and World Report, July 9, 2021, retrieved from <https://www.usnews.com/news/best-states/articles/2021-07-09/on-the-heels-of-the-pandemic-states-should-get-rid-of-certificate-of-need-laws>, March 8, 2023.

9 Agency for Health Care Administration, “Certificate of Need (CON) Program Overview,” retrieved from https://ahca.myflorida.com/MCHQ/CON_FA/, accessed on February 7, 2023.

10 Office of Program Policy Analysis & Government Accountability (OPPAGA), Florida’s Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting is Important to Assess Hospice Quality,” March 2006.

11 Agency for Health Care Administration, Florida Need Projections for Hospice Programs, February 2023.

of life, where the consumers do not have time to “shop around” for the best option. The marketplace has winners and losers, and the state uses its CON program to protect especially vulnerable consumers from bad practices similar to those in California.

FLORIDA’S HIGH-RANKING HOSPICE DELIVERY MODEL

Florida’s competitive batching cycles facilitate a race-to-the-top market for hospice care, ultimately developing a highly effective, high quality network of hospice providers. For the latest CMS data, published February 2023, Florida is within the top ten for its delivery of hospice services when measured against other states:

- The Hospice and Palliative Care Composite Process Measure divides patient stays that satisfy applicable criteria for seven categories¹² by total patient stays. **Florida is ranked 6th nationwide, with a score of 95.9 percent.**¹³
- The Hospice Care Index Overall Score is the average score of hospices that earn points (1-10) for meeting different claims-based indicators.¹⁴ **Florida tied 3rd nationwide, with a score of 9.5.**¹⁵

Characteristics of Florida’s hospice industry that exhibit especially high performance include its growth of providers, delivery of quality care, high levels of utilization, and low indication of fraud.

Effective Growth of Providers

The CON program facilitated controlled, intentional growth in hospice providers, ensuring growth reflects the need of local areas. As a result, despite having the second most hospice patients nationwide,¹⁶ Florida is ranked

30th for its number of hospice providers.¹⁷ Florida has 91 licensed hospice programs and a total of 47 hospice providers.¹⁸ In 2021, Florida’s programs served a total of 154,500 hospice patients, an average of about 3,300 patients per provider.¹⁹

The rate of growth of hospice providers closely resembles Florida’s population growth, suggesting an alignment between supply and demand. From 2010 to 2020, Florida’s number of hospice providers grew by 9.3 percent,²⁰ which resembles its population growth (7.4 percent).²¹ Meanwhile, California and Texas—populous states without a CON program—had 1,020 and 613 providers, respectively, in 2020. Since 2014, California’s number of hospice providers has grown by 66.7 percent and Texas’s number of hospice providers has grown by 22.6 percent.²²

Despite having a relatively small number of providers compared to other large states, Florida is equipped to serve a similar number of patients. California has nearly 22 times the number of hospice providers as Florida, but the state only served less than one percent more than the number of patients served in Florida in 2021.²³ To maintain a comparable number of patients, the relatively few providers in Florida operate large, experienced programs and maintain high utilization rates.

Providers Deliver Quality Care

As individuals seek hospice services, they do not have time to shop. One of the goals of the CON program is to ensure that residents can easily connect with readily available, quality providers. Time spent with patients suggests hospice provider performance is relatively high in Florida.

Hospice services are delivered by an interdisciplinary team and, as a patient nears death, the amount of time spent

12 The categories are beliefs/values addressed, treatment preferences, pain screening, pain assessment, dyspnea treatment, dyspnea screening, and patients treated with an opioid who are given a bowel regimen.

13 U.S. Centers for Medicare and Medicaid Services (CMS), Hospice – State Data, February 2023.

14 The indicators are continuous home care or general inpatient provided, gaps in skilled nursing visits, early live discharges, late live discharges, burdensome transitions (Type 1)—live discharges followed by hospitalization and subsequent hospice readmission, burdensome transitions (Type 2)—live discharges from hospice followed by hospitalization with the patient dying in the hospital, per-beneficiary Medicare spending, skilled nursing care minutes per routine home care day, skilled nursing minutes on weekends, and visits near death.

15 U.S. Centers for Medicare and Medicaid Services (CMS), Hospice – State Data, February 2023. Florida tied with Connecticut, Delaware, Indiana, Maryland, Maine, Tennessee, Vermont, and Wisconsin.

16 U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Hospice Utilization By State, Calendar Year 2021.

17 U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Post-Acute Care and Hospice-by Geography and Provider, 2020.

18 Agency for Health Care Administration, Florida Need Projections for Hospice Programs, February 2023. Some providers operate in more than one service area, creating the difference between the number of programs and the number of providers.

19 U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Hospice Utilization By State, Calendar Year 2021.

20 Florida TaxWatch, “Evaluating Hospice Certificate of Need in Florida,” April 2018; and U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Post-Acute Care and Hospice-by Geography and Provider, 2020. Current numbers from the U.S. Centers for Medicare and Medicaid Services (CMS) were compared to number from 2014, found in the Florida TaxWatch report.

21 U.S. Census Bureau.

22 Florida TaxWatch, “Evaluating Hospice Certificate of Need in Florida,” April 2018; and U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Post-Acute Care and Hospice-by Geography and Provider, 2020. Current numbers from the U.S. Centers for Medicare and Medicaid Services (CMS) were compared to number from 2014, found in the Florida TaxWatch report.

23 U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Hospice Utilization By State, Calendar Year 2021.

Table 1. Of States with Most Patients, Florida Hospice Providers Spend More Time with Patients at the End of Life

State	Total Number of Patients (2021)	Average Minutes of Nursing	Average Minutes of Social Work	Average Minutes with Home Health Aide
Total	1,702,809	60	5	19
California	156,000	78	5	15
Florida	154,521	154	5	33
Texas	143,284	62	4	16
Ohio	80,150	80	6	27
Pennsylvania	73,963	44	5	21
Michigan	60,337	50	6	16
Illinois	57,306	50	5	14
North Carolina	57,177	38	4	15
Georgia	55,236	55	5	20
New York	48,644	38	6	27

Sources: U.S. Centers for Medicare and Medicaid Services (CMS), *Medicare Hospice Utilization By State, Calendar Year 2021*; CMS, *Medicare Post-Acute Care and Hospice-by Geography and Provider, 2020*.

with the team is expected to increase. The U.S. Centers for Medicare and Medicaid Services (CMS) monitors the amount of time nurses, social workers, and home health aides spend with patients during their last seven days prior to death to determine the level of service delivered by providers. In the United States, a patient receives an average of 60 minutes of nursing, five minutes of social work, and 19 minutes with a home health aide during the last seven days of life (Table 1).

In Florida, the number of minutes spent with a social worker is comparable to the national average, but a patient receives 157 percent more time with a nurse and 74 percent more time with a home health aide. Among the ten states with the most hospice patients—three of which use a CON program to regulate hospice services—Florida has the highest average nursing minutes and average minutes with a home health aide.²⁴

Greater Utilization of Facilities

High utilization is an important way to protect the taxpayer’s investment in Medicare. A recent claims-based analysis of Medicare funds suggests that hospice care is the most cost-effective option for Medicare beneficiaries nearing the end of their life, regardless of how long they

receive hospice services.²⁵ In 2020, about 56.2 percent of Florida’s Medicare decedents used hospice care at the end of their life, a percentage significantly greater than other large states—such as Texas (49.8 percent) and California (42.3 percent)—and second only to Utah (60.7 percent).²⁶

High level of utilization is also an important way of measuring the accessibility of hospice programs. Florida witnesses an especially high utilization rate among racial minority groups compared to other states. The hospice utilization rate for Black, Asian, Hispanic, and North American Native groups in Florida is higher than the national average. When the rates were accumulated, Florida ranked second among the states for its hospice utilization by these racial minority groups.²⁷

Low Indication of Fraud

To be eligible for hospice care, a patient must be terminally ill and expected to die within six months. The manner and timing in which one dies is not always predictable. Due to this, hospices are likely to have some patients who receive a live discharge—leaving treatment for a reason other than death—or longer than expected patient stays. When a hospice patient stops receiving treatment due

24 U.S. Centers for Medicare and Medicaid Services (CMS), *Medicare Post-Acute Care and Hospice-by Geography and Provider, 2020*. Florida, North Carolina, and New York use a Certificate of Need Program to regulate hospice services. See, National Conference of State Legislatures, *Certificate of Need State Laws*, retrieved from <https://www.ncsl.org/health/certificate-of-need-state-laws>, accessed on February 10, 2023.

25 NORC at the University of Chicago, “Value of Hospice in Medicare,” March 2023. See also, National Bureau of Economic Research, “Dying or Lying? For-Profit Hospices and End of Life Care,” March 2023.

26 National Hospice and Palliative Care Organization (NHPCO), “NHPCO Facts and Figures 2022 Edition,” December 2022.

27 Hospice Analytics, *Racial Inclusion in Hospice*, February 2023.

Table 2. The Growth Rate of Hospice Providers Outpaces Population Growth, Placing the States at Greater Risk of Fraud

State	Population Growth (2017-2022)	Growth of Hospice Providers (2017-2022)	Total Hospice Providers (2022)	Live Discharge Rate (2020)
Arizona	5%	93%	222	12%
California	-1%	116%	1728	16%
Nevada	7%	100%	88	13%
Texas	6%	56%	902	12%

Sources: U.S. Census Bureau, *Annual Estimates of the Resident Population, 2017 and 2022*; U.S. Centers for Medicare and Medicaid Services (CMS), *Hospice - Provider Data, 2017 and 2022*; and CMS, *Medicare Post-Acute Care and Hospice-by Geography and Provider, 2020*.

to an improved health outcome or receives hospice care for longer than expected, this is not only good news for the family but also for Florida taxpayers. Longer patient stays are less expensive than alternative treatments. For example, a recent study of Alzheimer’s and dementia patients shows that hospice care is a less expensive use of Medicare funds than alternatives such as skilled nursing, home health care, or inpatient treatment, regardless of the hospice patient’s length of stay.²⁸

Even though live discharges and long patient stays are positive within ethical hospice operations, they are also warning signs of hospice fraud. A common form of hospice fraud is treating ineligible patients, which results in relatively high live discharge rates and long patient stays. This type of fraudulent activity is lucrative because it increases the pool of patients from which hospice providers can treat and typically requires less expensive services for the patients. High live discharge rates and long patient stays do not guarantee the presence of hospice fraud but are useful indicators when considering whether a hospice provider should undergo investigation.

“A high live discharge rate could in some cases be an indicator of poor quality of care provided or of provider misuse of the benefit, in that they may be enrolling beneficiaries who are not eligible for hospice.” – U.S. Government Accountability Office²⁹

Nationwide, the average live discharge rate is about ten percent.³⁰ Florida shares the same live discharge rate as the national average, which is lower than the rates

exhibited in other large states, such as California (16 percent) and Texas (12 percent).³¹ Florida’s live discharge rate is comparable to New York and North Carolina—other fairly large states using CON programs—both of which have a live discharge rate of eight percent.³² In 2021, Florida’s length of patient stays was also similar to the national average. The average days per hospice patients in Florida was 71 days and the national average was 73 days.³³

LESSONS LEARNED FROM OTHER STATES

Like other states, Florida created its CON program to satisfy the requirements of the National Health Planning and Resources Development Act of 1974 (“the Act”). In 1986, the Act was repealed, causing many states to modify, reform, or repeal their CON programs. About 35 states have a CON program in place, and only 13 states (including Florida) have a CON program that regulates hospice services.³⁴ If Florida considers following suit with other states by amending or repealing the CON program, there are potential unintended consequences to such changes.

Four states particularly draw attention to the risks of repealing CON hospice regulation: Arizona; California; Nevada; and Texas. These states are not performing well relative to other states in the absence of hospice regulation. Each of the four states is among the 11 states with the lowest Hospice and Palliative Care Composite

28 National Bureau of Economic Research, “Dying or Lying? For-Profit Hospices and End of Life Care,” March 2023.

29 United States Government Accountability Office, *Medicare Hospice Care: Opportunities Exist to Strengthen CMS Oversight of Hospice Providers*, October 2019.

30 U.S. Centers for Medicare and Medicaid Services (CMS), *Medicare Post-Acute Care and Hospice-by Geography and Provider*, 2020.

31 Ibid.

32 Ibid.

33 U.S. Centers for Medicare and Medicaid Services (CMS), *Medicare Hospice Utilization by State*, 2021. This number differs from Table 3 because it is more recent data. Table 3 reflects data from 2019. In 2019, the average days served per hospice patient was 74 days.

34 National Academy for State Health Policy, *50-State Scan of State Certificate of Need Programs*, May 2020. Alabama, Arkansas, D.C., Hawaii, Kentucky, Maryland, New York, North Carolina, Rhode Island, South Carolina, Tennessee, Washington, and West Virginia monitor hospice with a certificate of needs program as of May 2020.

Process Measure, and they are among the ten states with the lowest Hospice Care Index Overall Score.³⁵

In 2021, these states were responsible for 87 percent of new hospices nationwide.³⁶ Hospices can only treat patients who are terminally ill, resulting in a limited number of prospective patients. When states see great increases in hospice providers, the growth is commonly associated with fraud because there are not enough eligible patients to sustain all the new entrants to the marketplace. Comparing the rate of growth for hospice providers to each state's population growth reveals an imbalance (Table 2).

These four states also have high live discharge rates, another characteristic commonly associated with hospice fraud. As previously discussed, high live discharge rates can be the result of ineligible patients being treated.³⁷ All four states exceed the national average (ten percent).

With so many hospice providers, it is difficult for states like California and Texas to effectively monitor their operations. This not only makes it harder for the states to identify and stop hospice fraud, but also to ensure quality services are being delivered to their residents. Keeping track of hundreds of hospice providers requires larger government and more tax dollars than would be spent upon better monitoring of entrants to the market.

Governments in these states have no control over where new hospice providers set up shop. Hospice providers are most likely to conglomerate in urban areas to stay near larger population concentrations. In Nevada, three quarters of hospice providers are concentrated in Las Vegas, with the rest of the providers located in just four other cities. In Texas, a third of hospice providers are located in five cities that represent less than a quarter of the population.³⁸

One of the reasons states initially instituted CON programs was to ensure hospice providers would be accessible across the state. The lack of control over where hospice providers are located can hurt the utilization rate of people in smaller towns or rural areas. It can also make it more expensive to receive hospice services, as patients pay for travel and other associated expenses. Patients may even forestall seeking services, which can result in costly hospital visits.

Although yet to occur for these states, marketplace

competition could ultimately lead to more expensive hospice care. A large percentage of hospice referrals come after a hospital stay. If hospitals were permitted to operate their own hospice programs, then hospitals would have their own self-referral mechanism and community hospice programs would experience a hard time competing.

In January 2022, Florida TaxWatch released the report "Aging in Place: The Economic and Fiscal Value of Home and Community-Based Services," which underlined the importance of community-based care options to maintain the capacity to serve health care to a growing elderly population as well as to save Medicaid funds. In the case of hospice care, it is also important to note that limited access to community-based providers could hurt the patients who lose the opportunity to receive services from home. The patients may be required to pay higher costs for hospice services within a hospital-setting,³⁹ or be encouraged to seek costly hospital admittance before they can receive access to hospice services.

California State Auditor Report

To regain control of its hospice industry, California's governor has imposed a moratorium to temporarily stop the entrance of new hospice providers. The California State Auditor investigated the state's hospice practices. The audit report illustrates the negative consequences of deregulating hospice care, identifying types—and severity—of hospice fraud committed.

The California State Auditor evaluated multiple indicators suggesting large-scale hospice fraud within the state, especially in Los Angeles County. First and foremost, the California State Auditor observed that there are likely too few hospice-eligible patients for hospice providers to be running legitimate operations.⁴⁰ From 2010 to 2021:

- California's aged population grew by 47 percent, but the number of hospice providers grew by 383 percent; and
- Los Angeles County's aged population grew by 40 percent, but the number of hospice providers grew by 1,589 percent.⁴¹

According to the auditor's report, two common indicators

35 U.S. Centers for Medicare and Medicaid Services (CMS), Hospice – State Data, February 2023.

36 U.S. Centers for Medicare and Medicaid Services, QCOR, December 2022.

37 See section "Low Indication of Fraud."

38 U.S. Centers for Medicare and Medicaid Services (CMS), Hospice – Provider Data, November 2022.

39 Melissa Aldridge, Ab Brody, Peter May, Jaison Moreno, Karen McKendrick, and Lihua Li, Hospice Saves Costs for Families: Evidence from 16 Years of Medicare Survey Data, September 2021.

40 Auditor of the State of California, California Hospice Licensure and Oversight, March 2022.

41 Ibid.

Table 3. High Live Discharge Rates, Long Lengths of Patient Stays, and Small Demand Per Provider All Suggest California is at Greater Risk of Hospice Fraud Than Florida

Location	Live Discharge Rate	Days Receiving Services	Aged Persons Per Provider
National	11%	76	11,000
Florida	10%	74	95,000
California	16%	86	3,500
Los Angeles County, CA	26%	102	1,600

Source: Auditor of the State of California, Medicare Payment Advisory Commission, U.S. Centers for Medicare and Medicaid Services (CMS), and U.S. Census Bureau.

of fraud are high live discharge rates and long lengths of service.⁴² To be eligible for hospice services, a person must be terminally ill and expected to live no longer than six months if the illness takes its normal course. Together, high live discharge rates and long lengths of service suggest that persons being admitted into hospice programs may not be near the end of their life. Compared to how these indicators measure in Florida, the practices of California warrant greater scrutiny (Table 3).⁴³

Enrolling an ineligible patient for hospice services benefits fraudulent hospice providers in several ways. If the competition for eligible patients is tight, as seen in Los Angeles, enrolling an ineligible patient ensures the provider continues receiving payments. Since ineligible hospice patients are not terminally ill, fraudulent hospice providers are less likely to incur the relatively high costs associated with a patient’s final days of life. This cost-saving is likely to generate a greater profit than treating a hospice patient in need of hospice services.⁴⁴

The higher revenue for the fraudulent hospice provider comes at great cost to their ineligible hospice patients. Not only do the affected hospice patients spend money and time they would have otherwise spent elsewhere, but as a term of hospice enrollment, they also forego curative medicines. A misdiagnosis could prevent patients from receiving the curative treatment they need.⁴⁵

California audits found that, in some cases, fraudulent

hospice providers request Medicare payments for patients who are not even enrolled. The hospice patients may have no association with the hospice provider nor any knowledge as to what the hospice provider is doing. The California audit report estimates if a hospice provider fraudulently bills for 20 hospice patients, they can collect about \$122,000 per month in Medicare claims without using a cent on the delivery of services.⁴⁶

Hospice providers also commit fraud by stealing identities of medical personnel. Hospice providers are required to have a large, interdisciplinary team. To work around related licensure requirements, hospice providers may steal an identity and claim to employ the person to whom the identity belongs. The hospice providers then bill for services purportedly delivered by a person who does not work at their organization.⁴⁷

The California audit report suggests several hospice providers may be using stolen identities to support their billing. For example, the daily operations of hospice agencies are overseen by medical professionals referred to as administrators. While it may be reasonable for a hospice administrator to work for “two or perhaps three hospice agencies in total,”⁴⁸ the audit identified 31 administrators working at six or more hospice agencies within the state. Most egregiously, one individual was identified as the administrator for 27 different hospice agencies.⁴⁹

Since hospice services are paid with Medicare, rampant

42 A live discharge rate refers to the number of persons who stop receiving hospice services while still living. Lengths of service refers to the average number of days persons receiving hospice services stay enrolled with a hospice program before being discharged.

43 Auditor of the State of California, California Hospice Licensure and Oversight, March 2022; U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Hospice Utilization By State, Calendar Year 2019; U.S. Centers for Medicare and Medicaid Services (CMS), Medicare Post-Acute Care and Hospice-by Geography and Provider, 2020; and U.S. Census Bureau, American Community Survey (ACS), 2019. To remain consistent with the data provided by the California audit, data from 2019 are used where possible; however, the live discharge rates of Florida and California are from 2020.

44 Auditor of the State of California, California Hospice Licensure and Oversight, March 2022.

45 Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.

hospice fraud hurts not only hospice patients but also all taxpayers. The California State Auditor estimated that in Los Angeles County alone, hospice agencies overbilled Medicare by \$105 million and the state's Medi-Cal by \$3.1 million in 2019.⁵⁰ To better protect residents of their state and save millions of taxpayer dollars, the California State Auditor recommends revising state law in a way that resembles CON programs:

“To protect against excessive and fraudulent growth in the number of hospice agencies, the Legislature should revise state law to require new, previously unlicensed hospice agencies to demonstrate an unmet need for hospice services in an area where they wish to operate. The law should require that the number of hospice agencies in a given geographic region closely aligns with measures of the need for hospice services.” – California State Auditor⁵¹

In contrast with California, Florida's CON program creates an intentionally developed network of hospice providers. The CON program presents Florida with the opportunity to evaluate the hospice service provider's business plan as well as to limit the number of providers, making it easier for the state to survey and monitor their performance.

CONCLUSIONS & RECOMMENDATIONS

With a rapidly increasing and aging population, maintaining steady, intentional development of hospice services is crucial. Florida's CON model permits the state to ensure that the expansion of the number of hospice providers is orderly and in response to a demonstrated need for additional hospice providers. Repeal of the CON program is likely to result in increases in the number of providers far in excess of demonstrated needs. Absent additional staff and operational funding, the state will have a hard time monitoring the performance of the new providers, so the repeal of CON will necessarily increase the size and costs of state government. The repeal of CON also increases the likelihood of fraud and abuse, as was observed in California.

Repeal of CON will limit the ability of the state to ensure that expanded hospice services are available where they are needed, particularly in rural and low-income areas. This limits access to hospice in many areas of the state and increases the costs to provide hospice services in those areas.

If California and Texas are any indication, the growth in the number of providers will far exceed the growth in the number of patients, creating competition for a limited

number of patients. This too increases the likelihood of fraud as some providers may resort to illegal and/or unethical practices to stay in business.

The bottom line is Florida's CON program works. Echoing the findings from our 2018 report “Evaluating Hospice Certificate of Need in Florida,” Florida TaxWatch continues to recommend that the hospice CON program be retained in statute, and that hospice regulators continue to identify ways that Florida hospice providers can better secure high quality care for Floridians with terminal medical conditions. Our terminally ill Floridians and hardworking taxpayers deserve nothing less.

⁵⁰ Auditor of the State of California, California Hospice Licensure and Oversight, March 2022..

⁵¹ Ibid.

ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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The findings in this Report are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.


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