TRANSCRIPT - The Hospice Moratorium: What CMS Is Really Signaling About the Future – Part Two

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Teleios University Ad / Chris Comeauxaux 0:00

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Setting Up The Hospice Moratorium

Jeff Haffner 1:55

Welcome to TCN talks, and Anatomy of Leadership. We continue our conversation with Dr. Jennifer Kennedy in Part Two, The Hospice Moratorium. What CMS is Really Signaling About The Future. And now, here's Chris Comeaux and Cordt Kassner.

What Happens When The Pause Ends

Chris Comeaux 2:17
Well, that's a perfect segue. As we go to this next segment, Jennifer, it's exactly where I wanted to like, okay, here's kind of how we got here. Here's our prediction of if it's going to be extended or not. Where I want to go next is if the moratorium ends tomorrow. And it's interesting you say, I don't know if crazy is going to end. Well, there's a theory called S-Curve theory. And many people believe that hospice is on the right side of the curve. We walk through life cycles with human beings, kind of the bell-shaped curve. Well, even industries have a life cycle. Home health hospitals are further down the curve, but hospice is still on the right side of the curve. Well, you know the number one indicator that you're going down the curve? Regulation actually increases. The business becomes a lot more complicated, a lot more difficult, margins get tighter, and competition increases almost at like a huge accelerating pace. All of that we're actually seeing. So here's my question. Let's assume CMS announces tomorrow, and that tomorrow may be, let's see, if you go six months plus November would be sometime spring of next year. If it's a year from then, then we're actually out to uh May or so of next year. Well, then I guess it'd be, yeah. So May of next year. So what happens next? Should we expect another wave? Like, will it we just like just hold back the dam and then the dam is released and you're gonna have a whole bunch of new entrants? Is the market fundamentally change? What do you think?

Dr. Jennifer Kennedy 3:44
Well, let's think about this. We have um the folks that had their 855s in the pipeline, but didn't make the date, um, you know, the cut date for um the moratorium. So those um 855s will be processed, but think about the the stop gaps that CMS has put into place at enrollment and whatever other screening they've done AI or otherwise, right? Um, at that entry point. So I think it will be different um uh than it was uh this past May if someone was entering the system, let's say next May. Um I think there will be um more scrutiny on that 855 and that entry into the system, which hopefully will tamp down um some of those folks that are wanting those transactional hospices that are wanting to enter the hospice base. So I I think um if if CMS has enough time um and they have their ducks in a row, that will um fundamentally impact uh what we're gonna be seeing coming into uh our community uh at some time in the future. And then also, you know, there has been a lot of focus on um change of ownership. So I think there's gonna be more scrutiny on change of ownership uh from that facet as well. So I , I think it we will see a different kind

of um hospice uh overall when we get to the end of this road, whenever it may be. Um and I, I hope that uh it will not be too cumbersome uh for hospices that are legitimately wanting to enter the space to provide access to uh people who need end-of-life care, or those current hospices are wanting to expand for that same purpose.

Chris Comeaux 5:39
That's all well said, Jen nifer. I didn't consider until you just said it in the way you did that like we do it, we do some 855 work for a lot of our members and uh contractors through Teleios Consulting Group. Instead of us just sitting here with those things in the queue, we should probably go back and actually review that, just like with a fine-tooth comb, because it sounds like the auntie is going to be upped on the, which makes total sense. But I didn't even think about us going back and scrutinizing some of that work that we may have in the queue, which maybe leads to the next question.

Compliance Culture Tied To Quality

Chris Comeaux 6:09
Um, regardless whether it continues or not, what should hospice CEOs, compliance leaders be doing today to prepare for this kind of predicted future tomorrow that's probably only going to double down on regulatory scrutiny, increase it, et cetera?

Dr. Jennifer Kennedy 6:26
That's a great question. Um I, I think uh a couple of things. Um your organization has to have that culture of compliance and quality. It's not it's they're a handshake, they're a connect. It's not one or the other. It is compliance and quality together. And if you don't have that hard baked into your culture, you're gonna probably have issues. You need to have a solid compliance program in place. It's not required by regulation for hospice, but it is highly recommended by the OIG. And um organizations that have a good working compliance program um can determine their risk um very uh readily and put uh performance action or correction plans into place in a better way than an organization that does not have that. And then I would say um finally, you want to make sure that you're paying attention to all the information that's coming out uh from CMS, from other entities in the federal government uh that will cue uh where CMS is going and what they intend. I always think that the MedPack report um that comes out mid-March, um, you know, it's multiple chapters for multiple provider types, where you get like a quick data dump um and a quick analysis um from the MedPack folks can actually give you an idea of what a rule might look like when the rule comes out after that report. So I think all of those things together and just holding holding staff accountable, right? Holding them accountable not only for um the policies and procedures that you have in place, but for

making sure that everyone that enters um that hospice's care has the um optimal experience they deserve. Um, because even though we have life discharges, Chris, we have the majority of patients that come to hospice and they die. And we want them all to have an optimal experience.

Chris Comeaux 8:30
Yeah, very well said.

Cordt Kassner 8:31
You know, you're as you're talking about that, Jennifer, particularly around the compliance programs and that preparation for when the more moratorium is lifted, if that's November or next May or next November, or you know, whenever that happens, I , I know that CHAP puts on a lot of excellent education and certificate programs. I've I've participated in in leading some of those sessions. Um it makes me wonder if there might be an opportunity for some kind of a gold star compliance, you know, kind of a we're preparing for when the moratorium is lifted opportunity. If if if that falls within CHAP's umbrella or somebody else's, I I think that could be a helpful service for our hospices that are really working hard to get this right. Um, so they don't get caught in the net. And if they do get caught in the net, like how to get out of it, what you know, what to do about it with the least amount of harm.

Audits As A Cost Of Business

Dr. Jennifer Kennedy 9:34
Yeah, you make a good point. And and we have developed our education and and we have compliance and quality hard-baked into every education program that we do. And we actually have a five-star visit um program that we do put on to help up uh the quality piece. Um I also think that um in in encouraging or and not encouraging, but ensuring staff have uh continuing education about compliance, about quality, about what's happening at the 50,000 foot level, because that all trickles down into what they do every day. I think we have to expect that there will be more audits. Uh and with more audits, um, you have uh cost spending um to cover the cost of that audit. I think organizations, if they haven't built in audits as a cost of doing business, they need to do that moving forward. It's absolutely part of that budgeting process, of that operations. Um and with the um SSVI that will be implementing um out of the final rule, out of the final hospice rule for fiscal year uh 2027, that's another outlet to um bring audits to hospice providers depending on what their score is.

Predicting The Next Provider Wave

Cordt Kassner 11:00
Yeah, that's a great point. And and Chris, another kind of follow-up thought. You when you mentioned when the moratorium ends, there might be this flood of new providers, it actually made me think of what happened during COVID, where there were, I think CDC called it unexpected the expected, unexpected deaths or something like that, that that we saw uh we took the the number of deaths that were expected over the next five years, and it all happened in 2021. And and so they they weren't completely surprised, but they weren't expected in that one year. And and so we saw this huge spike in the number of deaths. The following year, it was below the expected number because those people had already died. And and I'm I'm kind of applying that to when the moratorium gets lifted, that there might be this huge increase surplus of providers that have been waiting six months or a year to enter the market. And then the following year, that might drop off a little bit. Like if you look at the number of new providers, hospice providers every year, I think it's like 250 or 300 new CCNs, like would be an average number of new providers each year until COVID. And we saw this huge spike in in California and some other states. And it'll be interesting to watch that wave because it will be interesting.

Chris Comeaux 12:26
So that's a great point, Cordt, actually. So, like, so if that's the average 250, theoretically, if they haven't dented it at all, you may see 600 uh kind of that pit up pin up demand, the dam burst. That'll be a great, like, man, we should probably come back to that measure. Like, what was it? And that'd be an interesting indicator if if the moratorium was effective and impactful, because you think they maybe it would have blended it to like maybe 400 or so, if it's actually kind of dissuaded some people from going, well, this was easy pick-ins, and now they're increasing regulation. We're gonna go try to find a uh underregulated area or something.

Cordt Kassner 13:02
And if there might be a policy way to to not just go from 250 new providers to 2,000 new providers to zero, like right? We we turned on the moratorium and put a chokehold on new providers entering the market. Well, maybe they don't just want to remove the moratorium card launch. Maybe, maybe there's a way to titrate those numbers of new entrants to the market. So it taper off the moratorium instead of an on-off light switch. Maybe there's a way to adjust, like I don't know what that looks like, but but as long as we're in the space we're in today, it it gives pause to think about what what some other options might be to remove the moratorium uh step by step instead of all at once. Which which Jennifer leads to to another question. If we were to fast forward five years and it's 2031, and we look back on this moratorium, do you think it'll be remembered as a as a

temporary pause, a turning point in regulation, or or maybe the beginning of something fundamentally new in how a hospice operates in this country?

Dr. Jennifer Kennedy 14:18
Well, you know what? I honestly think it depends on what happens after this six months um and how it will be remembered. Um if it's just six months, it's gonna be a blip, right? I that's what I think. If it goes longer than six months, I think that to me feels like a different kind of impact. You know, it's a longer period of time. Therefore, I think there would be better remembrance of oh boy, they're serious up at CMS. We had a year of moratorium and all of these different things were put into place. And yes, it has absolutely changed the fabric of how hospice works in the United States today. So I'm gonna be reserved here and say um that I think we have to wait to see what happens. And maybe, just maybe, I'll be retired by 2031.

Cordt Kassner 15:09
No, no, no, don't start talking now. Don't don't struggle crazy now.

Targeting Fraud Without Punishing Everyone

Chris Comeaux 15:16
Which which is a good segue to my question, Jennifer. So if you were queen for the day, I'll advocate for that. Queen Jennifer, um, you know, sometimes when regulations happen, it's a response to the lowest performers. Like we punish everybody for the smallest amount of worst performers in the class, but yet it affects the high performers just as much. So if you were queen for the day, how would you create a regulatory environment that aggressively eliminated fraud, but while also still encouraging innovation, growth, and access for those who are doing it the right way?

Dr. Jennifer Kennedy 15:49
That's a tough question. But I, I understand that you always have to start with the data. You have to look at the data, and that's what CMS looks like, and that's what they base decisions on. But um, it's kind of like when you have an additional documentation request uh from your MAC (Medicare Administrative Contractor). They request the record because they looked at the data, right? And then they look at the record and they see the patient and they see the patient's story. And um, you know, I I depending on the MAC and who's who's the auditor, you know, maybe it does um change the perspective, right? I'm gonna use that same analogy, uh, but in a larger scale, is that CMS is looking at the overall data of all hospices. But if we could look at other factors like how long have they been in practice, right? Um, what does their track record look like in terms of the data or the

things that they've done? I would like to look at their story. Um, you know, what kind of partners do they have out in their community? Um, what kind of maybe they want awards, you know, for um uh for different things uh that they've done. So it it goes beyond a number. Um, I think a hospice, just like a a patient goes beyond the data for a MAC, the a hospice's presence and and performance goes beyond a number that CMS is looking at. So I think I and I know this is probably astronomically impossible, but you know, if they could look at a hospice in a in a broader way um rather than just here's their data, um, to to really show the quality um beyond the data of of what that hospice is, I think that could be um could make a difference in sort of sussing out the bad actors from the hospices that want to be in and place to take care of people at end of life.

Chris Comeaux 17:55

I think actually this is kind of prophetic, Jennifer. Um, it's so funny that that uh thing of Elon Musk and Peter Thiel at PayPal just keeps coming back to me recently. Um it was in Peter Thiel's book Zero to One, and he teaches at Stanford, pretty interesting guy. Um, but they had this incredible dream team. Of course, Elon Musk was part of their senior leadership team. And they were early adapters of how to apply what we now know as AI. And when I look through the rearview mirror of especially healthcare, right, we've had such rudimentary tools. So if you have rudimentary tools, you're kind of penalizing everybody, but with very precision, precise tools, with brilliant people helping design the algorithms, maybe people like Cordt and Jennifer talking to them, you literally can create a NAT that catches about 80 to 85% proto principle, and then that takes the volume down to 15%, where then you apply the human thought process, and maybe the AI cannot catch. So you could build a much better mousetrap than one that just penalizes everybody, a more precise mousetrap. And because there is data across multiple domains, quality data, service data, i.e. cap scores, um, his measures, hope tool, you can start looking at it more holistically. Now, the SSVI is a kind of antithetical because, okay, yes, you can see now, wow, look at how they use data, but there's kind of some bone-headed things in there. Like, you know, you you don't norm the data, it's just spending. Like if you spend a dollar versus a hundred thousand dollars. So hopefully we can kill inform them and speak to them to go, hey, this is actually not well thought through. You have to norm the data, a hospice that's got a thousand patients a day versus the one's got 20 per day, you've got to kind of create a proportion to that. But the good thing is with AI and algorithms, you can keep fine-tuning it and getting better and better. So I think in some respects, you're prophetic that maybe for the first time we're going into a regulatory environment where it's not like, oh man, they're just penalizing all of us or those few bad actors. Maybe they can get a little bit more precise. Cordt, I bet you you have some things to say about that because you kind of live in this land.

Cordt Kassner 20:05

You know, the the thought that's going through my mind at the moment, it's kind of back to that hospice advocate at CMS to say, hey, maybe this one's not who we're intending to be penalizing. And it's it's not even the it's not to take a good provider and say there's nothing there. Like everybody has skeletons in the closet, everybody has a problem here and there. But it would be beneficial, I think, to have a threshold to say we're we're going after the waste, fraud, and abuse, the really bad actors, the crooks, as you said earlier. I and I say the people who should be thrown in jail for doing some of this stuff. And if you come across a good provider, it's not like there's nothing there. It's just they're not the intended target. So can we let them slip through a little faster instead of putting them on a five-year, you know, retroactive, horrible review process? Like there's something there. If we have time, we'll circle back to this one next year. You know, that kind of a thing. But right now we're staying laser focused on really eliminating the worst of the worst. I, I that's where I'm going with it. And I do think the AI, the algorithms, the there, there's opportunity to build some of these sensitivities into it. Uh, not sure if they are like, but but there is opportunity.

Chris Comeaux 21:35

That's where we need to position you more and more core to talk to them because that knowledge can help them kind of get more and more precise and then not not create a catch that's catching people that you don't want in there. Because you're right. It's as a government gets overregulated, you show me the man and I will find find the crime for them. It kind of feels like that. Like you're right. Everyone, there's no such thing as a perfect organization because they're made up of human beings, especially. In a heart-centered service-based business like hospice, but you really do want to smoke out the people that they're not even playing the same game as the people trying to do it right. Um, Jennifer, I've got a final question for you that I think is much, very much in your wheelhouse. So as we get the so back to S-Curve theory, you get more regulation, more regulation, more regulation. How do people kind of build that compliance department? And what here's what comes to mind, and I'm kind of a business geek, Cordt knows that. Like airlines is a perfect example. As they got more heavily regulated, um, this is where Southwest Airlines in an industry buyers said, Oh my God, I don't want to go in the airline industry. They made it fun kind of service. Now, it may not be that today, but there was a season where they created success where other people were becoming so overregulated. It was a horrible customer service experience because everybody's dancing to the tune of regulation. How do we balance that as we go forward? Because we do want to have right a very compliance focus. You spoke to that. But I would hope that we don't go the way. Like I've been on hospice admissions and I've seen the hospice nurse saying, you can't call 911, you can't go to the hospital. Here's what regulations say. Don't you want to sign up for us? And I'm sitting there going, man, no, I wouldn't want to sign up for that. That does

not feel like something that's good for me. But you can see they're spouting the regulations.

Keeping Compassion While Staying Compliant

Dr. Jennifer Kennedy 23:25
Yeah, I, I think that's the million-dollar question, isn't it? It's all about balance. Um and I think it it is a delicate dance these days because you need you need to make sure that you have all of your um compliance um straight so that you can surf an audit and come out pretty well, or you know, surf a survey and um have the least amount of deficiencies cited. But you also need to be in the business of compassionate care. Um so how do I how do I uh have my staff understand all the things that we have to do? Plus, how do they how do I help them maintain that compassionate approach to what they do every day? And I I think it it's a lot of communication. It is keeping people informed, but um also helping them figure out how to deliver a message and what messages they want to deliver. I also feel um it is critically important because we have so much um involvement with um messaging to the lay population, the users, if you will, of hospice that um we understand their perspective from the moment you step into the home, right? So what what do you know about hospice? And if they say, well, I read the paper and this, this, and this, and this is fraudulent, and then we have to adjust the messaging, don't we? We have to approach it in a different way. So I think a lot of education, real life education for for staff is gonna be critical. Um, from an operation standpoint, I think you have to have, again, I'm gonna cite a compliance program in place. You have to make sure that you have um budget for uh quality folks, you have budget for compliance folks, so that your operations is as clean as possible, you're sending in clean claims, good um accurate cost report. But you're also you have that bridge between all that we have to do this, we have to do this into translation, into um staff understanding what you have to do, why you have to do it, but also that they can maintain that um uh compassionate uh approach in front that is what hospice is.

Chris Comeaux 25:52
That's

The 4Ms And Closing Bookmark

Chris Comeaux 25:53
well said, Jennifer. You just reminded me, and this is where we're great partners. Um we had Dr. Khai Win, who's a mutual friend, I think, of both of you. But the Four M's are so

brilliant because in some respects these regulations are like the lowest bar. We we should sometimes it's hard to go back and connect the why, but if we connect the why to stuff like this, is why that's there. And we want to exceed that. And here's this brilliant framework of what matters most, mentation, mobility, medication, as we're listening, especially that what matters most, and to develop the care plan around that, we should be hurdling over these regulations. The regulations are kind of like the bottom of the heap. We want to be playing at a much higher level. That's what I heard in what you just said.

Dr. Jennifer Kennedy 26:38
Absolutely. Yeah. And I uh I am a fan of the 4Ms and I'm a fan of uh uh Dr. Khai. Uh and yeah, I mean, I really think that's where um healthcare has to go. It has to go based on what matters to the patient and figuring out what their perspective is right from the get-go.

Chris Comeaux 26:59
You bet. Cordt, what final thoughts or questions you might have?

Cordt Kassner 27:03
Oh, Jennifer, I as you were talking about bringing the compassion and the regs, I just kept dialing into your superpower. Wow, that sounds just like a nurse. So brilliant. Thank you so much for taking time and joining us today.

Dr. Jennifer Kennedy 27:16
Well, gosh, thanks for having me.

Chris Comeaux 27:19
Yeah, and the super superpower of superpowers is she's a hospice nurse. Look at her. Yes, and this is weird. This is why listeners need to be watching. And so Jennifer just flexed in a wonderful way on behalf of all you amazing hospice nurses. Jennifer, thank you to you and the team at CHAP. Tell Teresa we said hi. Tell Kim that we said hi. You got a great team there. We partner with you on the accreditation side because we're we're at the same ilk. We're all about that. It's by the bedside. It's the mission. This is why we do this work. And um, it's so disappointing that some some bat actors have kind of tainted people's perception because that is a small percentage of the broader, amazing people like you, us, the hospices we work with, our listeners out there doing great work. So thank you.

Dr. Jennifer Kennedy 28:06

Thank you for having me. And just um thank you uh to both of you. Thanks for all you do, and thanks for all you do uh out there in Podcast Land.

Chris Comeaux 28:15

Yeah, amen. We do this for you, our listeners. We want to thank you. Um, you do amazing work. And we do do this show for you, Cordt and I, and then all the other shows that we do on the TCN team. Jeff Haffner, Executive Producer here. And you know, at the end of each episode, we always share a quote, a visual. The idea is to create a Brain Bookmark, a thought prodder about our podcast subject to further your learning and growth. We're hoping it sticks, kind of like a brain tattoo. Please subscribe to our channel. We don't want you to miss an episode. If you're interested in the book, The Anatomy of Leadership, we have a link for that. Any links that Jennifer wants to include to their podcast, any links to chat, we're gonna have those as well. So thanks for listening to TCN talks | Anatomy of Leadership. And here's our Brain Bookmark to close today's show.

Jeff Haffner 28:56

"The game we're watching is not the game that's being played" by Cord Kassner.