

Eli's Hospice Insider

Compliance: Are You Ready For Addendum Requirement Set To Hit Oct. 1?

It's past time to nail down your policies, procedures, and forms.

If you thought Medicare would show hospices some mercy on the new election statement and addendum requirements this fall, think again. The 2021 hospice payment final rule says those requirements are on track for Oct. 1 implementation..

In response to the 2021 proposed rule, numerous hospices told the **Centers for Medicare & Medicaid Services** that they needed a delay to the requirements taking effect Oct. 1, CMS admits in the rule published in the Aug. 4 Federal Register. "Most commenters recommended that CMS delay the effective date because of the public health emergency ... in response to the COVID-19 pandemic," CMS says in the rule. "Commenters recommended a delay of at least one full year beyond the end date of the COVID-19 public health emergency because of concerns that hospices have shifted their operational priorities to address the pandemic and have not had time to complete the modifications to the election statement, develop the addendum, or establish new processes and train new staff on the new content requirements."

Hospices also told CMS that their electronic medical records vendors were not ready for the change, according to the rule.



The **National Hospice & Palliative Care Organization** asked for a delay of a year from the PHE's end, notes **Judi Lund Person**. At the least, members were hoping for a year from the October 2020 deadline.

But CMS isn't having it. "We appreciate the magnitude of efforts undertaken by hospice providers as our country responds to the public health emergency for the COVID-19 pandemic," the agency says in the rule. But the requirement had already been delayed a year, CMS hasn't proposed any further changes, and hospices' preparations should have already been well underway.

"We expect that hospices have already begun making the modifications to their election statements and developing their addendums ... well before the start of the public health emergency," CMS says in the rule. "The expectation was that hospices would start making these modifications when these requirements were finalized in the FY 2020 ... final rule (published on August 6, 2019)," the agency continues.

If anything, "the public health emergency underscores the importance of providing the 'Patient Notification of Hospice Non-Covered Items, Services, and Drugs' to requesting hospice beneficiaries to ensure they are able to make treatment decisions to best meet their needs during this time," CMS says of the pandemic.

But hospices and their vendors were unable to prepare until CMS issued specifics - which was only recently, maintains the **National Association for Home Care & Hospice**. "The hospice industry had many questions about the changes to which there was no additional guidance received until the FY 2021 proposed rule was released with a sample election statement and election statement addendum from CMS - five months and a few days prior to the implementation date," NAHC says. That was also after the PHE was declared. Other questions remain unanswered or were only addressed in this final rule, the trade group adds.

The refusal to move the implementation date is "disappointing," as it "will create added challenges for hospices, who have to implement and train staff on these new requirements while continuing to navigate the COVID-19 pandemic," says attorney **Andrew Brenton** with **Husch Blackwell** in Madison, Wisconsin.

"The pandemic has put a tremendous amount of pressure on hospices and other providers, who in many cases have had to adjust the manner in which they care for their patients, update their infection control policies, acquire additional PPE and other supplies, and develop and implement operational and clinical processes to address the pandemic," Brenton tells **Eli**. "This new pressure has meant that oftentimes other tasks, such as preparing for these new regulatory requirements, have had to be delayed."

Aug. 1 to Oct. 1 is a very short window, Lund Person points out. All sorts of tasks from integrating the form with EMRs to identifying and training the relevant staff to devising a tracking system for requested and delivered addendums must be completed very quickly. "There are a lot of moving parts," she notes.

Payment Condition Piles On The Pressure

One of the reasons it's so important to get the addendum requirement right from the get-go is its status as a condition for payment. "If you don't get it right, you won't get paid for that care," Lund Person highlights. And since it's the election, that will mean no payment for the patient's entire stay.

CMS shoots down hospices' arguments against making it a payment condition.

"Most commenters still disagree with CMS's decision to make the election statement addendum a condition for payment," the rule acknowledges. "The Social Security Act only authorizes the condition for hospice payment based on a patient's having made an election to receive hospice care," one commenter told CMS. "An addendum, provided after the election, cannot and should not legally alter the election or make the election retroactively invalid for purposes of payment."

But CMS doesn't agree. "We do not believe that the decision to elect hospice services can be made without full information and disclosure as to what items, services, and drugs the hospice will and will not be covering based on their determinations of what is and what is not related to the terminal illness and related conditions," the rule insists. "We believe making the hospice election statement addendum a condition for payment is necessary to ensure that hospices are diligent in providing this information to Medicare hospice beneficiaries on request. We regard this addendum as a means of accountability for hospices to provide coverage information to beneficiaries electing the hospice benefit."

Effect: "The pressures of the pandemic have only increased and show no real signs of abating in the near term," NAHC President **William Dombi** says in a release. "This requirement will certainly necessitate a shift of clinicians from patient care to paperwork."

In addition to the implementation difficulties, hospices still face uncertainties about the requirement. "CMS has done little in the way of clarifying how it and the Medicare contractors will interpret this condition of payment or assess the payment impact of late, missing, or otherwise non-compliant addenda," Brenton says.

Affected contractors such as the HHH Medicare Administrative Contractors and Beneficiary and Family Centered Care Quality Improvement Organizations (BFCC-QIOs) appear to have had little to no training on the requirement so far, Lund Person notes.

CMS has indicated it will release "sub-regulatory guidance, and MLN articles to ensure education is furnished to all relevant stakeholders," NAHC says. "There is a mere 62 days until October 1, 2020," the trade group pointed out when the rule was released.

Good news: CMS took many of the industry's suggestions to heart for the election statement and addendum models, Lund Person points out.

Note: The rule is at www.govinfo.gov/content/pkg/FR-2020-08-04/pdf/2020-16991.pdf. Links to a significantly revised model election statement and addendum are at www.cms.gov/medicare/medicare-fee-service-payment/hospice/hospice-regulations-and-notices/cms-1733-f.

