

Eli's Hospice Insider

Compliance: Proposed Rule Smooths Out A Few Addendum Wrinkles But Ignores Some Big Flaws

Day-late addendum can still lead to losing to a month of pay.

Help is on the way for hospice addendum problems thanks to the 2022 hospice proposed rule, but it may not be the type hospices would most like to see.

In the rule published in the April 14 Federal Register, the Centers for Medicare & Medicaid Services outlines these changes to the election statement addendum that was implemented on Oct. 1, 2020:

Three vs. five days. In the 2020 hospice final rule, CMS made clear that hospices had to furnish the addendum within five days from the date of the election when a beneficiary or their representative requests it at the time of the initial hospice election/admission. After that time, hospices have three days from a request to furnish the addendum.

Problems arise when that three-day timeline puts the addendum deadline before the assessment completion date. "In some instances, this may mean that the hospice must furnish the addendum prior to completion of the comprehensive assessment," CMS explains.

"If the addendum is completed prior to the comprehensive assessment, the hospice may not have a complete patient profile, which could potentially result in the hospice incorrectly anticipating the extent of covered and non-covered services and lead to an inaccurate election statement addendum. Hospice providers are only able to discern what items, services, and drugs they will not cover once they have a beneficiary's comprehensive assessment," CMS maintains in the rule. Thus, CMS is "proposing to allow the hospice to furnish the addendum within 5 days from the date of a beneficiary or representative request, if the request is within 5 days from the date of a hospice election," it says.

For example: If the patient elects hospice on Dec. 1 and requests the addendum on Dec. 3, the hospice would have until Dec. 8 to furnish the addendum, CMS offers.

Signature timing. "There is not a timeframe in regulations regarding the patient signature on the addendum," CMS notes in the rule. It figured hospices would secure the signature on the addendum when they get the signature on the election statement itself, and that signature date would prove compliance with the three- or five-day deadline. "However, we understand that some beneficiaries or representatives may request an emailed addendum or request more time to review the addendum before signing, in which case the date that the hospice furnished the addendum to the beneficiary (or representative) may differ from the date that the beneficiary or representative signs the addendum."



Thus, CMS proposes "that the hospice would include the 'date furnished' in the patient's medical record and on the addendum itself," according to the rule. "The 'date furnished' must be within the required timeframe (that is, 3 or 5 days of the beneficiary or representative request, depending on when such request was made), rather than the signature date," CMS clarifies.

Refusal to sign. Sometimes the bene or rep will refuse to sign at all, even though "the signature on the addendum is only acknowledgement of receipt and not a tacit agreement of its contents," CMS says. In those cases, "the hospice must document clearly in the medical record (and on the addendum itself) the reason the addendum is not signed in order to

mitigate a claims denial for this condition for payment," the rule advises. "In such a case ... the 'date furnished' must still be within the required timeframe ... and noted in the chart and on the addendum itself."

Non-hospice provider request. "If a non-hospice provider requests the addendum, rather than the beneficiary or representative, the non-hospice provider is not required to sign the addendum," CMS says. The hospice should document in the patient record that it furnished the addendum, however.

Conforming regulations. CMS has previously issued guidance clarifying that when a patient dies within five days of admission, the hospice doesn't need to issue the addendum; and that hospices have three calendar days rather than 72 hours to meet the three-day addendum deadline. The agency proposes "conforming regulations text changes" to reflect that guidance.

CMS also seeks to codify its guidance that an addendum signature is no longer required "in the event that a beneficiary requests the addendum and the hospice furnishes the addendum within 3 or 5 days ... but the beneficiary dies, revokes, or is discharged prior to signing the addendum," according to the rule. The medical record would still need the date the hospice furnished the addendum and an entry explaining what happened to no longer necessitate the signature.

"The addendum clarifications CMS is making are generally helpful," the National Hospice and Palliative Care Organization acknowledges. Not many claims from October 2020 and later have been reviewed yet, but "it is important to understand how [auditors] are interpreting and enforcing the addendum requirements," the trade group says.

"The clarifications and proposals provided were needed and are helpful," acknowledges **Katie Wehri** with the National Association for Home Care & Hospice. But "we are disappointed CMS did not address all the outstanding issues related to the election statement addendum," Wehri tells AAPC.

For example: "CMS did not address the penalty hospices face when the addendum is requested but not provided timely," Wehri points out. "Hospices could be only one day late in providing a requested addendum and face denial of a full month of payment," she stresses.

"The penalty CMS has instituted for not providing a requested addendum timely is not consistent with CMS' desire to motivate hospices to provide the requested addendum timely," Wehri contends. In other words, once hospices are a day late with the addendum, they have no incentive for providing it quickly.

The rule also emphasizes some requirements that hospices may not have been clear on. "In the event that a beneficiary (or representative) does not request the addendum, we expect hospices to document, in some fashion, that an addendum has been discussed with the patient (or representative) at the time of election, similar to how other patient and family discussions are documented in the hospice's clinical record," CMS indicates in the rule. "It is necessary for the hospice to document that the addendum was discussed and whether or not it was requested, in order to prevent potential claims denials related to any absence of an addendum (or addendum updates) in the medical record," the agency continues.

And "as finalized in the FY 2020 ... final rule, the hospice election statement addendum will remain a condition for payment that is met when there is a signed addendum (and its updates) in the beneficiary's hospice medical record," CMS emphasizes.