

Eli's Hospice Insider

Documentation: Do You Want To Depend On Referring Physician Documentation?

Change CMS is considering could throw up major access roadblocks.

Compared to their home health agency colleagues, hospices have had a relatively smooth time with the physician face-to-face encounter mandate. But soon they may encounter an equally disastrous physician documentation requirement, if CMS follows through on the line of thinking it reveals in the 2018 proposed rule for hospice payment.

The **Centers for Medicare & Medicaid Services** reviews the requirements for physicians making a hospice eligibility decision on a patient's terminal diagnosis.

"Multiple clinical tools and guidelines, and more specifically the Medicare Administrative Contractor (MAC) Local Coverage Determinations (LCDs), exist to assist the patient-designated attending physician and hospice medical director/hospice physician designee in determining the patient's terminal prognosis," CMS says in the rule published in the May 3 Federal Register. "These guidelines provide indicators that support a decline in clinical status, including, but not limited to: History of recurrent infections, worsening symptoms that are non-responsive to treatment, increasing emergency department and clinician visits, laboratory results supporting progression of disease, and change in functional status," the rule notes.

"However, documentation of these indicators would likely not exist without some degree of long-term monitoring and evaluation by a physician separate from the hospice medical director/hospice physician designee," CMS says. "As such, this information would typically be found in the referring physician's and/or acute/post-acute care facility's medical records."

Now: Under current regs, "only the initial certification has to involve the attending physician and only if the patient has designated one," CMS notes. "There is currently no requirement that a patient must designate an attending physician and therefore the responsibility for certification can solely reside with the hospice medical director or the physician member of the hospice interdisciplinary group."

Spending and length of stay have been increasing for the Medicare hospice benefit, and "there are ongoing concerns that some hospice patients may be inappropriately certified as terminally ill," CMS says in the rule.

Then: Accordingly, CMS wants to tighten up its documentation requirements. "We are soliciting comments for possible future rulemaking, on amending the regulations at § 418.25 to specify that the referring physician's and/or the acute/post-acute care facility's medical record would serve as the basis for initial hospice eligibility determinations," CMS says. "Clinical information from the referring physician and/or acute/post-acute care facility supporting a terminal prognosis would be obtained by the hospice prior to election of the benefit, when determining certification and subsequent eligibility" (emphasis added).

CMS adds this justification: "This potential clarifying regulatory text change would be in alignment with benefit eligibility criteria that the individual must be certified as terminally ill prior to receiving hospice services, and fundamentally could not be determined by hospice documentation obtained after admission."

CMS claims that "the inherent challenges in prognostication make it critical for a hospice to obtain, and the certifying hospice medical director or hospice physician designee to comprehensively review, the patient's clinical information when making the determination that the patient is terminally ill, and thus eligible for the Medicare hospice benefit. By increasing physician engagement and accountability, patients can be assured they are making the most informed decision possible, without limiting their treatment choices."

Change Would Sacrifice Short-Stay Patients To Target Long Stays

CMS isn't proposing this change yet, but rather soliciting feedback on the possibility of proposing it. But it's still a major rule provision to watch out for, experts say.

"The discussion on patient eligibility and the physician's role is surprising," says **Judi Lund Person** with the **National Hospice & Palliative Care Organization**. "The thrust of their inquiry seems to be directed toward hospice physicians being required to review and reference the attending physician's medical notes prior to the initial certification of a patient as eligible for hospice, or even requiring a face-to-face encounter with the hospice physician prior to certification."

Such a requirement could throw up major hurdles to hospice access. "The hospice community already deals with patients dying during the admissions process," Lund Person protests. "With approximately 25 percent of hospice patients dying within seven days, and more than half in two to three weeks, waiting for patient records or an appointment with the hospice physician would be a cruel and inhumane process that would deny patients the very care they need," she tells **Eli**.

Such a requirement "could create significant challenges for providers and ultimately delay or deny access to hospice services," underscores **Theresa Forster** with the **National Association for Home Care & Hospice**.

Ironically, in conjunction with the rule, CMS has released "a Request for Information to welcome feedback on positive solutions to better achieve transparency, flexibility, program simplification and innovation," the agency says in an April 27 fact sheet covering the RFI and the rule. "This will inform the discussion on future regulatory action related to hospices."

CMS wants "to start a national conversation about ... how Medicare can contribute to making the delivery system less bureaucratic and complex, and how we can reduce burden for clinicians, providers and patients in a way that increases quality of care and decreases costs," CMS continues in the sheet. "Ideas could include recommendations regarding ... elimination or streamlining of ... documentation requirements ... and how CMS can simplify rules and policies for beneficiaries, clinicians, providers and suppliers."

Take action: Hospices may be able to help head off this documentation proposal by submitting comments on it, Forster urges. "We hope that hospice providers will participate actively in the process for commenting," she notes. Comments are due June 26.

Note: See instructions for submitting comments in the rule at www.gpo.gov/fdsys/pkg/FR-2017-05-03/pdf/2017-08563.pdf.