

Eli's Hospice Insider

Election: Medicare Issues New Model Hospice Election Statement

New form addresses OIG concerns.

You'll need to get up to speed on a new model form from CMS, before it gets you into hot water with reviewers or surveyors.

Recap: In September, the **HHS Office of Inspector General** issued a report saying one-third of the election statements they reviewed for General Inpatient hospice stays lacked required information or had other problems (see Eli's Hospice Insider, Vol. 9, No. 11). The biggest problem the OIG found was that the NOE didn't specify the beneficiary was electing the Medicare hospice benefit (19 percent), followed by missing or inaccurate information on waiver of curative care (12 percent), missing palliative care information (9 percent) and inaccurate or unclear revocation and discharge info (4 percent).

The OIG urged the **Centers for Medicare & Medicaid Services** to "develop model text that hospices could use in crafting their election statements." In its comments on the report, CMS agreed to do so.

Right before Thanksgiving, CMS followed through on that promise, releasing a "Draft Sample" of its "Medicare Hospice Notice of Election Statement"

in MLN Matters Article SE 1631. "The Notice of Election Statement is very important in making sure that beneficiaries and their caregivers make informed choices," CMS maintains in the article.

"To assist hospices in completing acceptable election statements, CMS is providing a sample Notice of Election Statement ... [that] includes the necessary elements that assure the beneficiary understands the nature of hospice care and makes an informed decision."

On one hand: Hospices appreciate having concrete guidance on how to fulfill this somewhat confusing requirement. "We are hearing of an increasing number of hospices that may be using election statements that don't contain all of the required elements, so we believe this form will be of definite assistance to folks in the industry," says **Theresa Forster** with the **National Association for Home Care & Hospice**.

Smaller, independent hospices may not have had the time and resources to focus on this issue, so clarification from CMS on what is expected for compliance can be helpful to them, adds consultant **Kurt Kazanowski** with **Hospice Advisors** in Plymouth, Mich. And the model form should provide clarity to both hospice consumers and referral sources, Kazanowski hopes.

On the other hand: The **National Hospice & Palliative Care Organization** has some concerns about the new form, says NHPCO's **Judi Lund Person**:

Concern #1: The form's name may add to some already existing confusion between "the patient's job" □ signing the election statement □ and the "hospice's job" □ submitting the Notice of Election to Medicare, Lund Person tells **Eli**.

"In the past, many folks have referred to the [NOE and the patient benefit election statement] interchangeably as the Notice of Election," Forster cautions. "Given all of the issues with the NOE, we are really working to make sure that hospice providers distinguish between the form the patient signs to elect hospice (election statement or benefit election statement) and the Notice of Election, which is submitted by the hospice to the MAC to change the patient's status in the Common Working File."

NHPCO hopes CMS will change the "Medicare Hospice Notice of Election Statement" title of the draft form to simply the "Medicare Hospice Election Statement," Lund Person says.

Concern #2: CMS's new model election statement contains labeled spots for a witness signature and date. There is no official requirement for those elements in Medicare regulations or policy, Lund Person points out — even though it is generally considered an industry best practice. By including the non-required elements on the model form, some auditors, claims reviewers, etc., may deny claims based on the interpretation that the election statement must contain the witness signature and date.

Concern #3: The OIG report says that "regulations require that the election statement include information on key features of the hospice benefit.

Specifically, the election statement must include acknowledgments that the beneficiary (1) has been given a full understanding of the palliative rather than curative nature of hospice care and (2) is waiving all rights to Medicare payment for certain services — such as treatment of the terminal illness and related conditions — when not provided by or arranged for by the beneficiary's designated hospice."

Observers thought the "palliative rather than curative" language that the OIG cites multiple times in the report might make it into the official language of the election statement model form. Fortunately, it did not, Lund Person observes. Patients tend to not understand that language and it just leads to confusion, she says.

Instead, the form says "I acknowledge that I have been given a full explanation and have an understanding of the purpose of hospice care.

Hospice care is to relieve pain and other symptoms related to my terminal illness and related conditions and such care will not be directed toward cure. The focus of hospice care is to provide comfort and support to both me and my family/caregivers."

This language is much more consumer-friendly, proponents say. But in addition to the form's model language, NHPCO would like CMS to officially communicate to Medicare Administrative Contractors and other Medicare-contracted reviewers that the form's more general language is acceptable, and that an election statement need not contain the "palliative versus curative" language specified by the OIG, Lund Person says.

Watch out: CMS needs to take care that the new form not become a barrier to accessing the hospice benefit, Kazanowski cautions. Confusion by potential patients and even hospices themselves over the new requirement can cause patients who need hospice care not to receive it.

Note: See the draft model at the end of the MLN Matters article at www.cms.gov/Outreachand-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/Downloads/SE1631.pdf.