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Regulations: Addendum Time Frame Tops The List Of Its Problems

Being a condition of payment could severely punish hospices.

While hospices are all for having their patients better understand the benefit, Medicare's newly proposed election statement addendum is not the right vehicle for the job, experts contend.

In its 2020 hospice payment proposed rule, the **Centers for Medicare & Medicaid Services** proposes some tweaks to the election statement, which are fairly benign (see story, p. 44). But it also proposes an exhaustive election statement "addendum" that lists all of a patient's unrelated diagnoses and related services, drugs, etc., that the hospice won't cover (see story, p. 44).

Clincher: The addenda would require a detailed explanation of why the conditions and related items are not related to the terminal diagnosis or pain or symptom management.

CMS insist that despite the extensive new document, "as the hospice regulations and the CoPs already require the assessment and documentation of unrelated conditions as described throughout this section, we believe there is no increase in hospice burden resulting from this addendum requirement to communicate with non-hospice providers." And "we believe the collection of information for the election statement and the addendum is already accounted for in the hospice [Condition of Participation] burden estimates," CMS adds.

Burden also would be reduced for hospices that don't rule anything unrelated and thus cover all the medical services, drugs, etc., a patient needs, CMS contends.

One of the problems that is easy to identify right off the bat is CMS's time frame for the addendum. When a patient requests it at start of care, hospices would have a mere 48 hours to furnish the exhaustive document, says the rule published in the April 25 Federal Register.

"The time frame for completing the addendum is too short at 48 hours," declares **Lynn Stange**, president of consulting firm **Weatherbee Resources** in Hyannis, Massachusetts. CMS should set the deadline "at a minimum ... to five days, which is the time frame for all disciplines to complete their assessments of the patients," she insists.

Complying with the 48-hour deadline will be "a significant administrative burden to hospices," judges attorney **Brian Daucher** with **Sheppard Mullin** in Costa Mesa, California. "These time frames are not reasonable."

"The addendum additions are out of touch with the practical nature of providing (semi)emergent admissions," insists **Chris Acevedo** with **Hospice Fundamentals** in Delray Beach, Florida. "Most hospices ... cannot truly make final determinations regarding the relatedness of drugs until a patient is reviewed in IDG/IDT."

Bottom line: "The mere thought of requiring notice to patients 'immediately' or within 48 hours is daunting," Acevedo tells **Eli**. "While indeed patients should have a clear understanding of costs and covered services, the burden on hospices to provide such understanding should not be pressed upon them in an unreasonable time frame."

How Optional Is Optional?

CMS says hospices would have to furnish the addendum only upon patient request. "But just how is that choice to be documented?" Daucher asks. "Hospices will face a dilemma here: Either provide the addendum to everyone, or risk a situation where Medicare determines that the patient wanted it, the file does not contain it, and all payment must be returned."

That's right - CMS proposes making the requested addendum a condition of payment. "It would be better to be honest and simply require the addendum than to set up another trap for unwary providers," Daucher predicts. "Whose burden will it be to prove that a patient did not ask for the addendum?"

Making the addendum a criteria for payment introduces another risk for hospices - audits, Daucher points out. If a requested addendum is missing, "then a hospice would forfeit all reimbursement for the patient," he emphasizes. "This sets up yet another audit 'gotcha' for Medicare."

The full reimbursement would be forfeit even if Medicare loses no money, Daucher highlights. "Even in cases where there is no denial of any service by a hospice, and no additional cost to Medicare that could be identified, Medicare auditors (licking their chops) will still be able to demand 100 percent forfeiture of payment if the addendum is missing," he warns.

Problem: "Medicare loves forfeiture," Daucher rues. "It really is an outrage for Medicare to act like it can ignore 500 years of Western jurisprudence on this point and set up forfeiture traps, one after another."

Another area of burden will be the updates required for the addendum every time the plan of care is updated, Stange notes. "Although CMS is stating that adding the addendum would not be burdensome, the idea of updating the addendum possibly as frequently as every 14 days … could be burdensome in adding time to IDG discussion and documentation," she cautions.

"Today, nurses who case manage hospice patients on average have a caseload of 15," Stange maintains. "To add the responsibility for the addendum and updates to the nurse will likely take time away from patients and increase not only paperwork but IDG discussion time."

CMS May Be Chasing A Pipe Dream

Medicare would love for the unrelated diagnoses issue to be black-and-white with no gray area. But that's just not how it works in reality, experts insist.

"There is variability in how physicians, even within a single hospice, make decisions regarding what is related and unrelated to the patient's hospice care," Stange contends. "Therefore … CMS's goal of creating consistency and reducing noncovered services may not prove to be as streamlined or consistent among or within hospices as intended."

And burden isn't the only negative impact from this proposal, Daucher warns. "Although Medicare claims that this is about notice to the patient, make no mistake, this is about further reducing the costs Medicare incurs for 'unrelated to terminal illness' treatments," he says.

No-win: "If a hospice does not list items as unrelated, it will be exposed to audit if it does not cover such expenses (like diabetes treatment for cancer patients)," Daucher says. "If a hospice does list items, it will still be subject to audit scrutiny, as CMS believes that 'virtually all' medical needs should be deemed related."

And the document may "confuse some patients and deter hospice use as patients will be concerned about this issue, even if it is very unlikely to arise for the vast majority of patients," Daucher claims.

The fiscal incentives are also short-sighted, Daucher argues. "The relative level of expense for 'unrelated' expense is low (amounting to less than 1 percent of Medicare dollars), when compared to overall expense of hospice, and much less when compared to overall end-of-life expense to Medicare," he points out.

In other words, nit-picking with hospices about unrelated expenses and potentially deterring hospice utilization is not a smart financial decision for Medicare's bottom line.