

Eli's Hospice Insider

Regulations: Brace Yourself For Added Election Burden Next Year

A relaxed timeline to issue the document is one bit of good news in an otherwise tough regulation.

Medicare may say the newly finalized election statement addendum is optional, but your preparation for the complicated new requirement is not.

In a final rule published in the Aug. 6 Federal Register, the **Centers for Medicare & Medicaid Services** adopts mainly as proposed a new requirement that hospices furnish an election statement addendum to patients who request it, outlining what conditions, services, and items are considered unrelated to the patient's terminal illness, and therefore not covered by the hospice (see specific requirements, p. 77).

Good news: When CMS proposed the addendum, it wanted hospices to furnish it within 48 hours at election or "immediately" during the course of treatment. In the final rule, it relaxes that timeframe to five days at election and 72 hours during the course of treatment.

"The 5 days on admission requirement matches the requirement for the completion of the comprehensive assessment," points out **Judi Lund Person** with the **National Hospice & Palliative Care Organization**. "We believe that will help providers with compliance," she cheers.

More good news: CMS also pushed back the implementation for a year, to Oct. 1, 2021. "We understand that making ... an addendum to accompany the election statement will take time for hospices to create, educate staff, and incorporate into current admission processes. Likewise, we recognize that there are some additional logistical and operation considerations ... that we will need to consider and communicate to the hospice industry to help ensure a more seamless implementation," the rule says. "This additional year will allow hospices to make any current process and software changes to incorporate the addendum into their workflow."

That delay is "useful," judges attorney **Brian Daucher** with **Sheppard Mullin** in Costa Mesa, California.

In fact, it is "necessary," says **Catherine Dehlin**, director of hospice and palliative services for **Fazzi Associates** in Northampton, Massachusetts. "This is a heavily burdened regulation which requires providers to develop new policies, procedures, forms, workflows, and processes in order to avoid the potential penalties a condition of payment requirement ... can create if not implemented with care."

In addition to the extensive staff education requirement, implementing this regulation would have been nearly impossible by the Oct. 1, 2020 start date, as first proposed, Dehlin says.

What Does 'Unrelated' Mean?

But aside from the time frame, CMS finalizes the addendum requirements mostly as-is over concerns, criticisms, and alternatives submitted by scores of commenters on the proposed rule.

A top misgiving cited by hospices is the definition of "unrelated." Articulating to beneficiaries what is unrelated to the terminal diagnosis is incredibly complicated and difficult, commenters protested. There is a "lack of guidelines provided by CMS as to how determinations of relatedness are made, other than it is the responsibility of the hospice physician," they complained, according to the final rule.

Other commenters said relatedness is "vague," there is a lack of clarity around the term, and that hospices - and even physicians within hospices - hold a different view on the definition. They urged CMS to issue more specific guidance on the topic.

CMS insists that hospices really should have mastered this point already, given that "the hospice medical director must consider all health conditions, whether related or unrelated to the terminal condition, as well as current clinically relevant information supporting all diagnoses when making the decision to admit a patient into hospice;" the interdisciplinary group must establish an individualized plan of care; and the POC must meet the patient's and family's specific needs. The determinations the hospice uses for eligibility and POC purposes should go onto the new addendum, which should "spur conversations with the patient about these determinations and the impact on the patient," CMS argues.

Plus: "We remind commenters that since the implementation of the Medicare hospice benefit, it has been our position that virtually all of the care needed by terminally ill individuals should be provided by the hospice," CMS emphasizes. The agency repeats that "virtually all" language throughout the rule. "As such, there should not be a voluminous list of unrelated items, services, and drugs given the comprehensive nature of hospice services."

Back in the FY 2015 rulemaking cycle, CMS "solicited comments on definitions of 'terminal illness and related conditions,'" CMS adds. Most commenters opposed CMS proposing these definitions, saying "hospices were the experts at making such clinical determinations" and "the hospice should be the entity that establishes a process to make determinations as to what is related and unrelated ... on a patient-by-patient basis."

Due to this feedback, "we have not proposed definitions for 'terminal illness or related conditions,'" CMS points out.

Note: The rule is at www.govinfo.gov/content/pkg/FR-2019-08-06/pdf/2019-16583.pdf.