

## Eli's Hospice Insider

### Regulations: CMS Grants Exceptions To NOE Filing Deadline

**Hint: An IT meltdown will not qualify you for a filing deadline exception.**

CMS got an earful about Notice of Election filing deadlines from commenters on its earlier 2015 proposed payment rule, and the feds seem to have listened ☐ at least a little.

**Problem:** "Some commenters felt it would be unfair for hospices to experience financial consequences due to exceptional circumstances that are beyond the control of the hospice, which cause the NOE to be filed untimely," the **Centers for Medicare & Medicaid Services** says in its final rule published in the Aug. 22 Federal Register. "Several commenters suggested that the provider liable days resulting from failing to meet the 3 calendar day timeframe for NOE filing could cause unintended consequences, including delaying admissions."

**Solution:** "We agree that there are some circumstances that may be beyond the control of the hospice where it may not be possible to timely-file the NOE within 5 calendar days after the effective date of election ... and appreciate the variety of examples to illustrate such exceptional circumstances," CMS responds in the final rule. "Therefore, we are finalizing an exception policy for the timely filing of the NOE, which would waive the consequences for failure to timely-file a NOE."

Hospices are off the hook for late NOEs in these four circumstances:

1. fires, floods, earthquakes, or other unusual events that inflict extensive damage to the hospice's ability to operate;
2. an event that produces a data filing problem due to a CMS or Medicare contractor systems issue that is beyond the control of the hospice;
3. a newly Medicare-certified hospice that is notified of that certification after the Medicare certification date, or which is awaiting its user ID from its Medicare contractor; or,
4. other circumstances determined by CMS to be beyond the control of the hospice.

**How it will work:** "The hospice must document the circumstance to support a request for an exception, which would waive the consequences of filing the NOE late. Using that documentation, the hospice's Medicare contractor will determine if a circumstance ... qualifies for an exception," CMS explains. "Hospices retain their usual appeal rights on the claim for payment. The Medicare contractors will provide hospices with information on how to request an exceptional circumstance and a waiver of the consequence of filing the NOE late."

The final "other circumstances" exception is leaving some hospices hopeful that CMS will grant a lot of leeway with the five-day requirement. But CMS takes pains to point out excuses that will not qualify as exceptions. "Personnel issues; internal IT systems issues that the hospice may experience; the hospice not knowing the requirements; and failure of the hospice to have back-up staff to file the NOE are not acceptable circumstances that meet the exceptions," the agency specifies in the rule.