

Eli's Hospice Insider

Regulations: Don't Overlook These Hidden Addendum Pitfalls

Take the signature requirement seriously or risk losing payment.

Along with the new Notice of Election addendum consequences of additional workload, payment risks, and coverage confusion, come lesser-known but still serious problems - and you need to be ready for them when the requirement takes effect next fall.

Despite hospices' protests, the **Centers for Medicare & Medicaid Services** finalized the requirement in its 2020 hospice payment rule (see Eli's Hospice Insider, Vol. 12, No. 10). The following areas are poised to give hospices headaches when the addendum requirement takes effect Oct. 1, 2020:

Access. The addendum is likely to "delay access to needed services because of the time it would take to make these determinations and consult with the IDG and could potentially deter individuals from electing the benefit," multiple commenters told CMS in response to the proposed rule earlier this year.

In the 2020 final rule published in the Aug. 6 Federal Register, CMS denies this widely held opinion. "The decision to elect hospice is not one that is taken lightly and it is because of the significance of this decision that we believe individuals and their families need to have full disclosure and coverage transparency regarding the services provided and not provided by the hospice as they approach the end of life," the agency maintains. The Medicare Conditions of Participation already task hospices "with providing detailed information on hospice services and limitations to those services to the patient upon election of the benefit," CMS continues. The addendum merely "further complements these requirements by ensuring that the hospice informs them of any items, services, or drugs which the terminally ill individual would have to seek outside of the benefit."

Bottom line: "We do not believe that providing full coverage transparency at the time of hospice election would generally deter or unnecessarily overwhelm individuals from electing hospice, thereby limiting access to such services," CMS counters. "An informed beneficiary will make the most appropriate choice to meet his or her needs and it is the hospice's responsibility to provide this information to support and promote beneficiary choice and access to needed services."

Denial of the comments received is par for the course in this rule, notes attorney **Meg Pekarske** with law firm **Reinhart Boerner Van Deuren** in Madison, Wisconsin. "The government didn't really respond favorably to commenters" across the board in the rule, she says in a podcast about the regulation.

Signatures. Don't forget, your addendum duty isn't over when you issue the document to the patient or family. You also must obtain the "signature of Medicare hospice beneficiary (or representative) and date signed, along with a statement that signing this addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not necessarily the beneficiary's agreement with the hospice's determinations," the rule spells out.

Obtaining signatures on the addendum statement will be "prohibitively challenging," proposed rule commenters told CMS. Circumstances that will make this requirement very difficult include when the patient's representatives live in a different state, and lack of readily available technology such as email accounts to return signed documents.

In the final rule, CMS acknowledges that securing signatures can be a hassle, but points out "obtaining the required signatures on the election statement has been a longstanding regulatory requirement. We expect that hospices already have processes and procedures in place to ensure that required signatures are obtained, either from the beneficiary or his or her representative in the event that the beneficiary is unable to sign and we expect that the same procedures may be used for obtaining signatures on the addendum."

Why it matters: "Because of the significance of the decision to elect hospice care and waive the right to Medicare payment for care related to terminal illness and related conditions, the terminally ill individual (and his or her representative) must have information related to all aspects of their care, including what the hospice has determined to be 'unrelated,'" CMS insists in the rule. "Requiring the patient to sign the written addendum memorializes that this important information has been provided by the hospice to the beneficiary."

Watch out: This signature requirement is especially important, because it could result in major payment denials, warns Reinhart attorney **Bryan Nowicki** in the podcast. It may, like the election statement, wipe out the whole payment for the period if it's missing, Nowicki says. Or a missing addendum signature may result in denials starting on the day it should have been secured. Time will tell as CMS clarifies the details in the year before the new requirement takes effect.

But you can be pretty sure Medicare contractors will view addendum signatures - and the lack of them - as "potential opportunities to find additional overpayments or technical denials," Nowicki predicts.

"That's our concern with making this a condition of payment," Pekarske notes. Even when there is no dispute over the patient's eligibility, no dispute that the addendum is complete and accurate, denials may occur just because the patient refused to sign the addendum, she worries.

Plus: Remember, the addendum "is only required if the patient or representative requests it," notes **Catherine Dehlin** with **Fazzi Associates** in Northampton, Massachusetts. "There may not be an addendum for every record."

That means auditors will need to be able to determine by looking at the record whether a request was made, Dehlin points out. The 2020 final rule "does not specify how, where, or if that request must be recorded," she says. That may pose a significant risk to reimbursement as well.

Content. Ranking high in hospices' concerns about the addendum is what will happen when drugs, items, or services are not on the addendum, and the patient goes to another provider for them without the hospice's knowledge. How often will items or services not even show up on the addendum, "because we don't know about them?" Pekarske asks. Will addendums get challenged because they don't include items that hospices didn't even know existed?

Hospices must wait for CMS to issue clarifications on gray areas such as this, the Reinhart attorneys say.

Communication. One good part of the new addendum is that it will allow hospices to learn about other medical providers and vice versa. "The use of the addendum can ensure communication with non-hospice providers and services in the community," **Judi Lund Person** with the **National Hospice and Palliative Care Organization** tells **Eli**.

The addendum should "benefit coordination" between providers, CMS notes in the final rule.

This is backed up by the Medicare CoPs at § 418.56(e)(5), which require "the ongoing sharing of information with other non-hospice healthcare providers and suppliers furnishing services unrelated to the terminal illness and related conditions ... to ensure coordination of services and to meet the patient, family, and caregiver needs," CMS continues in the rule. "The coordination requirements include that the hospice must develop and maintain a system of communication and integration amongst all providers furnishing care to the terminally ill patient. This communication helps to minimize fragmented care and to improve quality of life." Both hospice and non-hospice providers "typically document these discussions, which then becomes part of the patient's medical record with each provider," CMS adds.

While this is how the system is supposed to work, CMS has "heard anecdotally from non-hospice providers stating that they are unable to reach or do not receive return calls from the hospice to discuss the hospice beneficiary's coordination of services that the hospice has determined unrelated to his or her terminal illness and related condition(s)," the agency relates in the rule. "Likewise, we have also received anecdotal reports from hospices who state they were unaware that patients had received care from non-hospice providers."

The addendum should help cut down on both those issues, CMS hopes.

Coverage complexity. This requirement is more complex than it might first appear, suggests attorney **Brian Daucher** with **Sheppard Mullin** in Costa Mesa, California. That's because the addendum lists care that is not covered by the

hospice because it is unrelated - but that is not curative and thus still is covered under Medicare in general. The addendum won't include care that isn't covered because it's curative.

"Now with the requirement to disclose ... unrelated care (but not curative care that is waived), patients, patient representatives, and providers will have to have a more nuanced understanding of this complex nexus," Daucher says on the Sheppard Mullin Hospice Law blog. "Patients and their families do not come to hospice with expertise in these matters; instead, when they approach hospice they are facing the loss of a loved one; and, CMS itself is unwilling to draw any bright lines, instead once again putting that burden on the hospices themselves."

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