

Eli's Hospice Insider

Regulations: Hospices Hope For Election Addendum Postponement

You have only a couple of more weeks to give CMS your 2 cents.

A delay to the new election statement addendum requirement seem like a no-brainer to many hospices, but the proposed rule for 2021 makes that seem unlikely.

Why? The **Centers for Medicare & Medicaid Services** already delayed the implementation date to October 2020 to "allow hospices adequate time to make the necessary modifications to their current election statements, develop their own election statement addendum, and make any changes to their current software and business processes to accommodate the requirements," CMS notes in the proposed rule published in the April 15 Federal Register.

But in the face of the COVID-19 pandemic, "we definitely have concerns about hospices being able to gear up in time for an October start," notes **Theresa Forster** with the **National Association for Home Care & Hospice**.

During the public health emergency, hospices are struggling with problems ranging from procuring enough personal protective equipment (PPE) to accessing patients in facilities to coping with even shorter lengths of stay for patients, observes **Judi Lund Person** with the **National Hospice & Palliative Care Organization**. Those and many other COVID-19 challenges mean hospices may not be ready for this burdensome new requirement as previously scheduled, Lund Person tells **Eli**.

Hospices have a chance to appeal to CMS for a delay in comments on the rule, which are due June 9. But they won't find out whether there's a delay until CMS publishes the final rule, expected in early August - just weeks before the requirement would take effect.

Too late: It's not only hospices that need more than mere weeks to prepare, but electronic medical records vendors, notes NAHC's **Katie Wehri**. That's particularly true if there continue to be outstanding questions that need clearing up after CMS issues the final rule. The sample forms currently have a number of issues (see story, p. 44).

Plus, even if the COVID-19 emergency is over by August, "hospices will need time to recover" from the extraordinary amount of disruption it caused, Wehri tells **Eli**.

And if the emergency continues, the problems hospices are currently having getting election statements signed are likely to also occur with the addendum, Wehri expects.

Bottom line: "Implementing the new requirement at this time is not wise," Wehri concludes.

Hospices Must Document A Negative

The 2021 rule, while not adding new rulemaking on the addendum requirement, does clarify some areas of confusion, including:

Signatures. CMS explains that it will require a signature on the addendum just like on the election statement, "as well as the date the addendum was signed. We would expect that the signature on the addendum would be similar to how each hospice obtains the individual's signature on the election statement itself." If the patient signs the election statement electronically, then the addendum could also be signed electronically, CMS adds. But "it is at the contractor's discretion as to how they address patient/representative electronic signatures in their review of medical records, so hospices should confirm with their respective Medicare contractors as to the use of electronic signatures for beneficiary (or representative) signatures," the rule cautions.

Updates. Don't consider a patient's addendum one-and-done. "Hospices are already required to make updates to the plan of care at least every 15 days, or more often as the patient's condition warrants," CMS notes in the rule. "We would expect that hospices would adopt a similar process for making any necessary changes or adjustments to the election statement addendum." Updates could include "such conditions, items, services and drugs they determine to be unrelated," the rule explains. However, "we do not expect that there would be frequent changes to the addendum, especially as a patient continues in a hospice election and where most conditions are or become related to the terminal prognosis and therefore, the responsibility of the hospice to manage," CMS says.

Documentation. This requirement is a condition of payment, and the condition will be met "if there was a signed addendum (and any signed updates) in the requesting beneficiary's medical record with the hospice," CMS says. The signature of the patient "connotes that the hospice had the discussion about the addendum and its content," indicating no further documentation of the discussion is required. CMS expects that hospices will usually furnish a hard copy of the addendum to patients and their representatives.

Checkboxes. Hospices will need to document a negative - that patients did not request an addendum, the proposed rule confirms. "Careful documentation that the addendum was discussed and whether or not it was requested would be an essential step hospices could take to protect themselves from possible claims denials," CMS believes. "Hospices can develop a way to document whether or not the addendum was requested at the time of hospice election (or at any time throughout the course of hospice care). This could be done in checklist format or as anecdotal notes by the nurse." The process might be similar to the one hospices use to indicate whether a patient has designated an attending physician, CMS suggests. "Many hospices have included a checkbox on their election statement to indicate when the beneficiary has opted not to designate an attending physician. Hospices may choose to adopt a similar process for the election statement addendum to ensure that they have documented those situations when a beneficiary does not request an addendum upon having been told of their right to request one."

Billing and medical review. The "addendum would not be required to be submitted routinely with each hospice claim," CMS clarifies. But "the hospice should submit the signed addendum as part of any ADR" when it was requested, the rule says. If it wasn't requested, the hospice should submit its documentation of that - checkbox or otherwise. And patients don't need to sign a separate HIPAA consent for the addendum, CMS adds.

Note: The rule is at www.govinfo.gov/content/pkg/FR-2020-04-15/pdf/2020-07959.pdf. The model forms are at www.cms.gov/files/document/model-hospice-election-statement-and-addendum.pdf.