

Eli's Hospice Insider

Regulations: Informal Guidance Eases Addendum Reimbursement Worries, But New Requirement Still Concerns Hospices

Expect addendum audits in due course.

Hospices hoping they'd get official clarification on how missteps with the new hospice election statement addendum will affect payment have been disappointed so far, but at least some unofficial remarks are easing some pressure.

In the 2020 and 2021 final rules implementing the requirement and other documents, the Centers for Medicare & Medicaid Services specified that the addendum is a "condition for payment." But CMS hasn't spelled out what the financial penalty will be for failing to comply, either in part or whole.

Worst case scenario: Industry experts have worried that if hospices make a minor mistake such as missing the five- or three-day deadline by a day or leaving one item off the addendum, CMS would disallow payment for the patient's entire stay (see *Hospice Insider* by AAPC, Vol. 13, No. 9).

Now Medicare officials are giving hospices some reassurance on the issue. CMS has told the National Association for Home Care & Hospice that "the only financial penalty that should be imposed for the new condition of payment is when an addendum has been requested and there is not evidence in the medical record of the addendum being provided to the beneficiary/legal representative," the trade group reports. "CMS told NAHC that it will not be looking to determine if the addendum was provided within the required number of days or if all content requirements are met," NAHC says in its member newsletter.

This clarification should ease hospices' minds as they bring the addendum process online in the coming weeks.



But, problems and questions remain.

For example: CMS still hasn't specified exactly how large the penalty will be if the hospice fails to furnish an addendum when requested, NAHC's **Theresa Forster** points out.

That's "the main outstanding question hospices have," NAHC's **Katie Wehri** agrees. "What, exactly, is the penalty when an addendum is requested but is not provided?"

Attorney **Brian Daucher** with Sheppard Mullin in Costa Mesa, California, hopes CMS will clarify situations where an addendum is requested and not issued, but the patient doesn't have any services or items that the hospice didn't cover. "In my view, the only time the absence of a requested addendum should come into play [financially] is when there are in fact services that the hospices refuse to cover as unrelated," Daucher contends. But "the words 'condition of payment' are meant to set up the ability of CMS to recover all fees for service," he adds.

Failing to issue addendums when required should trigger a survey citation and corrective action plan, Daucher allows. But "in a typical breach of contract situation, the aggrieved party can only recover damages 'proximately caused' by the breach," he argues. "If there are no damages (no uncovered services), or if the damages are unrelated to the breach (i.e., because the patient without hospice knowledge obtained additional services from a non hospice context), then the breaching party should not be subject to a forfeiture (i.e., giving up all fees for service)," he tells AAPC.

"It is pure government overreach to try to recover payment for services on the basis of technicalities which do not actually cause either the patient or CMS actual harm of some kind," Daucher insists. "Basic fairness dictates that the

punishment match the crime, and not be excessive.”

In addition to the central penalty severity matter, hospices have more technical questions like how long they can have to provide an update to a requested addendum and how long to provide the requested addendum to a non-hospice provider, Wehri offers. “We are awaiting CMS’ response,” she tells AAPC.

Plus: “We have been getting questions primarily about how the addendum differs from the Advanced Beneficiary Notice and if a signature is required for updates to the addendum,” shares consultant **Lynn Stange** with Weatherbee Resources in Headland, Alabama. More training from CMS might help in these areas.

CMS’ latest comments also don’t address some of the thorniest problems with the addendum, Daucher says - pinning hospices down on the extent of coverage ahead of time, and situations when “beneficiaries ... go around hospice to other providers without hospice knowledge.”

Expect Addendum Audits In Your Future

While CMS’ communications with NAHC offer some relief, hospices shouldn’t bank on the unofficial guidance quite yet. Hospices would be wise to not rely on unpublished CMS comments to NAHC, Daucher advises. Medical review contractors such as Unified Program Integrity Contractors “are strongly incentivized to bring back money,” he reminds. “If CMS said as much in rulemaking, that would give more comfort.”

CMS’ clarification “does not alleviate concerns that CMS could perform audits related to the addendum with financial implications at some point,” Stange stresses.

Hospices should have official, written guidance to rely on soon, though, Forster says. CMS indicates it will issue the information in a MLN Matters article or similar vehicle, she notes. And NAHC expects changes to the Medicare Benefit Policy Manual as well, she adds.