

Eli's Hospice Insider

Regulations: Medicare Takes Baby Steps Toward Improving Hospice Addendum

CMS says 'no thanks' to many industry suggestions addressing addendum problems.

Hospices should be thankful for small favors when it comes to the election statement addendum, because they aren't getting any big ones in the hospice final rule for 2022.

Commenters on the proposed rule gave the Centers for Medicare & Medicaid Services a plethora of ideas for how to improve the addendum process, but CMS brushed off most of the suggestions.

Proposals that CMS shot down for various reasons include aligning the late penalty for the addendum with the penalty for late submission of the Notice of Election and other payment revisions; extending the three-day timeframe for addenda requested after the start of care to five days; making procedural changes retroactive to the addendum's Oct. 1, 2020 start date; and changing the three-day requirement from calendar to business days.

An example of CMS's refusal: "We do not believe that making these clarifications retroactive or delaying the effective date is necessary," CMS says in response to that suggestion. "To date we have not received reports of claims denials resulting from the implementation of the election statement addendum and ... many of these clarifying regulations text changes have been previously addressed in sub-regulatory guidance," CMS maintains. "As such, the implementation of these clarifications on October 1, 2021 would not cause a burden for software updates."

Most claims governed by the addendum won't have been reviewed yet, due to medical review restrictions under the COVID-19 Public Health Emergency and timing, experts point out.

Another example: "While these comments are out of scope of the proposed rule, we appreciate and welcome all feedback related to the late penalty; ABN and expansion of the addendum; signatures; exceptional circumstances; and educating hospice providers," CMS notes. "While we did not propose any of these recommendations we could consider them for future rulemaking."

CMS did follow through with finalizing its proposed changes, effective Oct. 1. "We are finalizing the clarifications and addendum regulation text changes at § 418.24(c) as proposed, with the exception of requiring the reason that the addendum is not signed to be documented in the patient's medical record," the final rule says.

The addendum changes do generally help, noted **Melinda Gaboury** with Healthcare Provider Solutions in Nashville, Tennessee, in HPS's "Monday Minute with Melinda" vlog. Those changes include:

Three versus five days. In the 2020 hospice final rule, CMS made clear that hospices had to furnish the addendum within five days from the date of the election when a beneficiary or their representative requests it at the time of the initial hospice election/admission. After that time, hospices have three days from a request to furnish the addendum.



Problems arise when that three-day timeline puts the addendum deadline before the assessment completion date. "In some instances, this may mean that the hospice must furnish the addendum prior to completion of the comprehensive assessment," CMS explained in the proposed rule.

Change: CMS will allow "the hospice to furnish the addendum within 5 days from the date of a beneficiary or

representative request, if the request is within 5 days from the date of a hospice election," the final rule says. "For example, if the patient elects hospice on December 1st and requests the addendum on December 3rd, the hospice would have until December 8th to furnish the addendum."

Date furnished: "There is not a timeframe in regulations regarding the patient signature on the addendum," CMS acknowledges in the final rule. Patients and their reps often refuse to sign the addendum, take a long time to sign it, or otherwise don't follow the three- or five-day timeline.

Change: "The 'date furnished' must be within the required timeframe (that is, 3 or 5 days of the beneficiary or representative request, depending on when such request was made), rather than the signature date," CMS says. The hospice will include the "date furnished" in the documentation.

The "best news" is that "we will not be held responsible if the patient or caregiver refuses to sign the document," Gaboury cheers. "You just have to make sure that it is very clear the date the document was furnished to the person who requested it," she advises.

Refusal to sign: Hospices must document why a bene or their rep won't sign the addendum, when that is the case, CMS specifies. But "some commenters stated that it is redundant to require the hospice to note on the addendum and in the medical record the reason that a beneficiary did not provide their signature," as CMS proposed, the agency notes in the final rule.

Change: "We recognize the commenters' concerns and agree that it is appropriate for the hospice to document only on the addendum itself the reason that an addendum is unsigned," CMS responds. "This could include not only a beneficiary refusing to sign, but also death, discharge, or revocation prior to the hospice obtaining the signature." A hospice can "choose to document the reason for an unsigned addendum in the medical record" as well if it wants to, CMS allows.

The National Hospice and Palliative Care Organization "thanks CMS for these clarifications, particularly the clarification that the hospice would meet the compliance requirements by the date the addendum is issued," says NHPKO's **Judi Lund Person**. "Clarifications about other circumstances for the addendum, such as when the patient dies or revokes, are also very helpful for hospice providers."

Do this: "Providers should ensure that their policies and processes now match the new timeframe requirements," Lund Person advises.

Other clarifications included in the final rule are:

Mailing an addendum is OK. "There is nothing precluding hospices from furnishing an addendum through mail," CMS says in response to a comment on the proposed rule. But "hospices would need to make sure the 'date furnished' on the addendum is within the required timeframe (3 or 5 days, depending upon when the request was made)," the agency instructs.

3 days versus 72 hours. CMS finalizes its proposal to add "conforming regulations text changes at § 418.24(c) in alignment with subregulatory guidance indicating that hospices have '3 days,' rather than '72 hours' to meet the requirement when a patient requests the addendum during the course of a hospice election," the rule says. "This means that hospice providers must furnish the addendum to the beneficiary or representative on or before the third day after the date of the request," CMS explains. "For example, if a beneficiary ... requests the addendum on February 22nd, then the hospice will have until February 25th to furnish the addendum, regardless of what time the addendum was requested on February."

Updated model. CMS has posted an updated addendum model incorporating the final rule's changes at www.cms.gov/files/document/model-hospice-election-statement-addendum-july-2021.pdf.

Note: The 79-page final rule is at www.govinfo.gov/content/pkg/FR-2021-08-04/pdf/2021-16311.pdf. For more about the rule's quality provisions, see a future issue of Hospice Insider

