

Eli's Hospice Insider

Regulations: New Hospice Addendum Requirement Poses Major Challenges

Sidestep these pitfalls when implementing the confusing addendum.

As if hospices don't have enough on their regulatory plates, the new election addendum requirement will take effect Oct. 1 with no relief from Medicare.

Recap: In its 2021 hospice payment rule, the Centers for Medicare & Medicaid Services rejected hospices' pleas to delay the new hospice addendum requirement until after the COVID-19 public health emergency is over (see Hospice Insider, Vol. 13, No. 9). "We expect that hospices have already begun making the modifications to their election statements and developing their addendums ... well before the start of the public health emergency," CMS says in the rule published in the Aug. 4 Federal Register. "The expectation was that hospices would start making these modifications when these requirements were finalized in the FY 2020 ... final rule (published on August 6, 2019)," the agency continues.

Under the new requirements, hospices must furnish an addendum upon request that "list[s] those items, services, and drugs the hospice has determined to be unrelated to the terminal illness and related conditions, increasing coverage transparency for beneficiaries under a hospice election," CMS reiterates in the 2021 rule.

"If you request this notification on the effective date of the hospice election (that is, on the start date of hospice care), the hospice must provide you this form within 5 days," CMS tells beneficiaries in its sample addendum form. "If you request this form at any point after the start date of hospice care, the hospice must provide you this form within 3 days."

Hospices had hoped for a delay to the form's effective date in light of the COVID-19 PHE. "Hospices may be struggling more to address the new requirements, especially given the heightened demands of navigating the COVID-19 pandemic," notes attorney **Andrew Brenton** with Husch Blackwell in Madison, Wisconsin.

"CMS had provided all kinds of flexibilities during the PHE, and we hoped that this would also be one of those regulations that would be reconsidered," says consultant **Chris Acevedo** with Hospice Fundamentals in Delray Beach, Florida.



But CMS shot them down in the final rule. "We were disappointed to see CMS not give hospices extra time to implement the requirements," Brenton says.

The refusal wasn't really a surprise. CMS "gave us essentially a two-year notice," points out consultant **J'non Griffin** with Home Health Solutions in Carbon Hill, Alabama. CMS originally planned implementation for October 2019, then postponed to 2020 to allow hospices more time to prepare.

Also, "the government is reopening and restarting ... surveys, medical review, etc.," Acevedo points out. "CMS overall is in 'resume to a normalcy' mode."

Your Staff Must Work As A Team - Or Else

With the addendum's implementation date set in stone and fast approaching, watch out for these pitfalls most likely to trap unwary hospices:

Relatedness. The idea of what is "unrelated to the terminal illness and related conditions" has been very tough for

providers and CMS to agree on. As the years have gone by, CMS has insisted that hospices should be covering nearly all care, equipment and drugs a patient is receiving, while hospices have maintained a significant number of things remain unrelated.

"Recognizing and thoroughly documenting relatedness and why a medication or treatment would not be covered is a difficult area currently for hospices," Acevedo judges. "When we provide reviews of medical records ... the majority of hospice agencies do not have this clearly documented."

"Having the nonrelated diagnosis (that requires the medical director's blessing) will pose a challenge," Griffin cautions. "Most hospice clinicians do not focus on comorbid conditions, only the primary terminal diagnosis," he says.

- **Time crunch.** From the 2021 final rule's issuance to implementation is less than two months. Many hospices are scrambling to get the changes in place, due to COVID-19 and other pressures. "The change requires an update in policy and process within hospices, which can be time-consuming," points out consultant **Lynn Stange** with Weatherbee Resources in Headland, Alabama.
- **Lack of guidance.** In the rule, CMS says hospices should have been prepping for this requirement for the past year. But the agency issued the significantly revised forms and guidance only in late July 2020 in conjunction with the 2021 final rule, industry experts highlight. Even with those forms and guidelines out, a "lack of clarity and thorough guidance and unanswered questions" remain, emphasizes **Katie Wehri** with the National Association for Home Care & Hospice.
- **Staff understanding.** The concept of relatedness is very complex, and the process of when to issue addendums is likewise not straightforward. Staff are apt to have a steep learning curve when it comes to both the content and the process, experts forecast. "Staff training on the new requirements, forms, and processes will ... be critical," Brenton stresses.
- **Documenting a negative.** CMS requires hospices to furnish an addendum only when the patient or their representative requests it. However, CMS makes clear in its regulations that hospices must document when the patient or rep does not want the form. "Consider implementing processes for documenting whether a patient requests the addendum," Brenton advises.
- **Representative signatures.** The beneficiary's or representative's signature is required on the form. One of the most difficult challenges "will be obtaining the signature of the legal representative when beneficiaries are not able to make their own healthcare decisions and the legal representative is not readily available or in close proximity to the patient," Wehri predicts.
- **Deadline.** Bringing together the content and the operational steps will be hard enough; getting it together to meet the five-day (at start of care) or three-day (after start of care) deadline will be a huge challenge, experts agree. The "timeline for furnishing a copy," will be a difficulty, Griffin expects. "A different timeline to furnish at the request of the patient/rep during the course of care," will only add to the complexity.

Note: The 2021 final rule is at www.govinfo.gov/content/pkg/FR-2020-08-04/pdf/2020-16991.pdf.