

Eli's Hospice Insider

Reimbursement: Addendum Will Carry Serious Payment Risks

Plus: CMS way underestimates burden for the new document.

At the top of the list of hospices' concerns about the new election statement addendum is the document's payment ramifications.

The **Centers for Medicare & Medicaid Services** proposed that the addendum be a condition of payment, when the patient has requested the document.

Commenters on the proposed rule vehemently opposed this idea. "Several commenters questioned how an addendum that is mandatory, but only upon request, could be appropriately used as a condition for payment," the notes the final rule published in the Aug. 6 Federal Register. The requirement should instead be part of the Conditions of Participation, commenters suggested.

Hospices also shared with CMS many worries about claims review, including that the lack of an addendum would lead to unfair denials and that the determinations used on the addendum would lead to denials.

"As commenters pointed out, the vast majority of hospices try to provide all care to all patients; and when hospice patients do get care outside of hospice, it is often without the hospice's knowledge (on patient or patient representative initiative without consulting the hospice)," says attorney **Brian Daucher** with **Sheppard Mullin** in Costa Mesa, California.

"We asked CMS to provide specific assurance that this new [condition of payment] would not be used to claim back payment absent a showing that there was both an actual patient request as well as an actual loss to the Medicare program (meaning proof that in that case Medicare had to spend money on 'unrelated' care that was not disclosed," Daucher tells **Eli**.

But CMS shot down the idea of moving the requirement to the CoP arena. Keeping the addendum as a payment condition "is necessary to ensure that hospices are diligent in providing this information to Medicare hospice beneficiaries on request," CMS maintains. And it is "an important mechanism of accountability" for hospices, the rule adds.

Result: The new addendum requirement poses a "very significant audit risk," Daucher warns. And don't be surprised to see that risk realized. "If CMS were truly interested just in notice to patients, they could have started this out as merely a Condition of Participation, thus mitigating the audit risk," Daucher continues.

The rule specifically mentions **HHS Office of Inspector General** reports finding that Medicare paid for drugs it shouldn't have under Part D, when hospices should have covered them. With the OIG issuing a new report on that topic just a few weeks ago, expect the pressure to stay on for medical review in this area, experts caution.

CMS does try to allay commenters' fears on the medical review front somewhat, however. "There is no current process for the MACs to make determinations of 'relatedness'. We remind commenters that the regulations afford hospices this responsibility," the rule says. "Therefore, the hospices' determination of those unrelated items, services, or drugs reported on the addendum could not be used solely to deny hospice claims."

Even though that's the case, CMS will take the extra step of "collaborat[ing] with the MACs to establish clear guidelines on the use of the addendum as a condition for payment," with any requirements being included in future rulemaking, as necessary.

"We do not want hospices to perceive that the purpose of this addendum is punitive against hospices, nor that it is a

mechanism to deny claims," CMS stresses. "Rather we want hospices to understand that the intent of this addendum is to keep patients at the forefront of their decision-making equipped with adequate information to make care choices as they approach the end of life."

Daucher believes that "providers can take some comfort from language that CMS wrote in the final rule," and "can cite this language when auditors strike," at least.

Do this: To protect against denials, hospices can develop a process to document that the patient did not request an addendum, CMS suggests.

10 Minute Estimate Is A Joke

Commenters also disagreed heartily over CMS's estimate burden included in the proposed rule, and CMS has only further reduced the burden estimation in the final regulation. The proposed rule claimed it would take a nurse only 10 minutes to complete the addendum.

Completing the addendum "is not just a process of extrapolating the information, but ... is often a process of information gathering as not all relevant information is readily available at the time of the initial assessment," commenters told CMS.

Hospices should remember they won't need to fill out the form for all of their patients, or even very many of them, CMS says. For many patients hospices will provide all the services, drugs, and items so no addendum is required; many patients won't request an addendum; and the addendum is not required for patients who die within the time frame of five days at election or 72 hours during treatment. That is almost 28 percent of patients, CMS highlights.

CMS sticks with its 10 minutes of RN time per addendum figure and reduces the number of addenda expected to be required, thanks to the relaxed time frame. The result is a cost of \$11.1 million per year for the new form, plus a one-time cost of about \$200,000 to develop the form for initial use, the rule indicates.

Nonsense: "Any addendum must include a list of eight items, including 'a written clinical explanation' supporting a determination that certain care is unrelated - an explanation that will no doubt be scrutinized by auditors," Daucher protests on his firm's Hospice Law Blog. "Providers must somehow secure a patient signature on these addenda" as well. "Ten minutes to do all of this?" he asks skeptically.

Don't hold your breath waiting for changes to the addendum in the 2021 rule, since CMS delayed the implementation date to next October. "We do not expect CMS to make any changes to the requirement in next year's rulemaking," **Judi Lund Person** with the **National Hospice & Palliative Care Organization** tells **Eli**.

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