



## Manual Updates Related to the Hospice Election Statement and the Implementation of the Election Statement Addendum

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### PROVIDER TYPES AFFECTED

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This MLN Matters Article is for hospice and non-hospice providers submitting claims to Medicare Administrative Contractors (MACs), including Home Health & Hospice (HH&H) MACs, for hospice and non-hospice services provided to Medicare beneficiaries under a hospice election.

### PROVIDER ACTION NEEDED

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The Centers for Medicare & Medicaid Services (CMS) is making changes to the Medicare Benefit Policy Manual to include the modifications to the election statement and the requirements for the hospice election statement addendum, effective for hospice elections beginning on or after October 1, 2020.

### BACKGROUND

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In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38520), CMS addressed vulnerabilities in coverage transparency under the Medicare hospice benefit and finalized modifications to the election statement content requirements at [42 CFR 418.24\(b\)](#). In addition to the modifications to the hospice election statement, CMS also finalized a policy relating to the provision of an addendum to the election statement to increase coverage transparency. The content requirements for the hospice election statement addendum are in the regulations at section [42 CFR 418.24\(c\)](#).

These changes are effective for hospice elections beginning on or after October 1, 2020, and represent a 1-year delay, which allowed hospices the time to make the necessary modifications to their existing hospice election statements, develop their own hospice election statement addendum, and establish processes to incorporate these changes into their workflow.

The following summarizes the changes to the Medicare Benefit Policy Manual (Pub. 100-02), chapter 9, "Coverage of Hospice Services Under Hospital Insurance".

### **Modifications to the Hospice Election Statement Content Requirements**

Effective for hospice elections beginning on or after October 1, 2020, in addition to the existing content requirements at section 418.24(b), the hospice election statement must also include the following information:

- Information about the holistic, comprehensive nature of the Medicare hospice benefit;
- A statement that, although it would be rare, there could be some necessary items, drugs, or services that will not be covered by the hospice because the hospice has determined that these items, drugs, or services are to treat a condition that is unrelated to the terminal illness and related conditions;
- Information about beneficiary cost-sharing for hospice services;
- Notification of the beneficiary's (or representative's) right to request an election statement addendum that includes a written list and a rationale for the conditions, items, drugs, or services that the hospice has determined to be unrelated to the terminal illness and related conditions and that immediate advocacy is available through the Beneficiary and Family Centered Care Quality Improvement Organization (BFCC-QIO) if the beneficiary (or representative) disagrees with the hospice's determination

### **Hospice Election Statement Addendum Content Requirements**

Also, for hospice elections beginning on or after October 1, 2020, in the event that the hospice determines there are conditions, items, services, or drugs that are unrelated to the individual's terminal illness and related conditions, the individual (or representative), non-hospice providers furnishing such items, services, or drugs, or Medicare contractors may request a written list as an addendum to the hospice election statement.

The hospice election statement addendum content requirements are described at section 418.24(c). A signed addendum in the requesting beneficiary's medical record would be a condition for payment. A signed addendum is only acknowledgement of receipt of the addendum (or its updates) and not necessarily the individual's (or representative's) agreement with the hospice's determinations.

The election statement addendum must include the following:

1. The addendum must be titled "Patient Notification of Hospice Non-Covered Items, Services, and Drugs";
2. Name of the hospice;
3. Individual's name and hospice medical record identifier;
4. Identification of the individual's terminal illness and related conditions;
5. A list of the individual's conditions present on hospice admission (or upon plan of care update) and the associated items, services, and drugs not covered by the hospice because they have been determined by the hospice to be unrelated to the terminal illness and related conditions;
6. A written clinical explanation, in language the individual (or representative) can understand, as to why the identified conditions, items, services, and drugs are

considered unrelated to the individual's terminal illness and related conditions and not needed for pain or symptom management. This clinical explanation must be accompanied by a general statement that the decision as to whether or not conditions, items, services, and drugs are related is made for each patient and that the individual should share this clinical explanation with other health care providers from which they seek items, services, or drugs unrelated to their terminal illness and related conditions;

7. References to any relevant clinical practice, policy, or coverage guidelines;
8. Information on the following:
  - Purpose of Addendum. The purpose of the addendum is to notify the individual (or representative), in writing, of those conditions, items, services, and drugs the hospice will not be covering because the hospice has determined they are unrelated to the individual's terminal illness and related conditions.
  - Right to Immediate Advocacy. The addendum must include language that immediate advocacy is available through the BFCC-QIO if the individual (or representative) disagrees with the hospice's determination.
9. Name and signature of the individual (or representative) and date signed, along with a statement that signing this addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not necessarily the individual's (or representative's) agreement with the hospice's determinations.

#### **Timeframe for Furnishing the Hospice Election Statement Addendum**

If the hospice election statement addendum is requested on the effective date of the initial hospice election (that is, the start of care date), the hospice must provide this information, in writing, to the individual (or representative) within 5 days from the effective date of the election. If this addendum is requested during the course of hospice care (that is, after the effective date of the hospice election), the hospice must provide this information, in writing, within 3 days of the request to the requesting individual (or representative), non-hospice provider, or Medicare contractor.

If the addendum is requested on the effective date of the hospice election (that is, the start of care date) and the beneficiary dies within the first 5 days from the start of hospice care, and before the hospice is required to furnish the addendum, the hospice does not need to furnish the addendum after the patient has died, and CMS would consider this condition for payment to be satisfied.

Likewise, if the addendum is requested during the course of hospice care (that is, after the effective date of the hospice election), and the beneficiary dies within 3 days from that request and before the hospice is required to furnish the addendum, the addendum would not be required to be furnished after the patient has died, and this condition for payment would be considered satisfied.

If there are any changes to the content on the addendum during the course of hospice care, the hospice must update the addendum and provide these updates, in writing, to the individual (or representative).

**Example:** Mr. Brown requests the election statement addendum on October 3rd, the effective date of his initial hospice election (that is, at the time of admission to hospice). The hospice must provide this information, in writing, to Mr. Brown within 5 days from the effective date of the hospice election. Therefore, the hospice must give the addendum to Mr. Brown on or before October 8th.

**Example:** Mrs. Smith's effective date of her hospice election was November 1st, but she did not request the election statement addendum on that date. On December 4th, Mrs. Smith requests the election statement addendum. Since Mrs. Smith requested the election statement addendum during the course of hospice care (that is, after the effective date of the hospice election), the hospice must provide this information, in writing, within 3 days of her request. Therefore, the hospice must give the addendum to Mrs. Smith on or before December 7th.

**Example:** Miss Jones requested the election statement addendum on May 1st, the effective date of her initial hospice election. Miss Jones died on May 3rd. Because Miss Jones died within the first 5 days from the start of hospice care and before the hospice was able to furnish the addendum, the hospice does not need to furnish the addendum since Miss Jones died, and this condition for payment would be satisfied.

### **Hospice Election Statement as a Condition for Payment**

While the addendum is not submitted with hospice claims, it is a condition for payment if the beneficiary (or representative) has requested it. This condition for payment is satisfied when there is a beneficiary (or representative) request present, which is documented by a valid signed addendum in the requesting beneficiary's medical record with the hospice.

However, if a hospice claim has been selected for medical review, and it is clear based on received documentation that the beneficiary requested, but did not receive, the addendum within the time period specified at 42 CFR 418.24(c), the failure to provide such addendum should result in a claims denial. However, the Medicare contractor may request the addendum to accompany any additional documentation request to mitigate such denial. A denial resulting from a violation of this specific condition for payment would be limited to only the claim subject to review (that is, it would not invalidate the entire hospice election).

## **ADDITIONAL INFORMATION**

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The official instruction, CR 12015, issued to your MAC regarding this change is available at <https://www.cms.gov/files/document/r10437bp.pdf>.

See the CMS Hospice Center at <https://www.cms.gov/Center/Provider-Type/Hospice-Center>.

If you have questions, your MACs may have more information. Find their website at <http://go.cms.gov/MAC-website-list>.

## DOCUMENT HISTORY

Date of Change	Description
November 6, 2020	Initial article released.

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