CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-02 Medicare Benefit Policy	Centers for Medicare & Medicaid Services (CMS)
Transmittal 11056	**Date: October 21, 2021**
	Change Request 12491

SUBJECT: Manual Updates for Clarification on the Election Statement Addendum and Extension of the Hospice Cap Calculation Methodology

I. SUMMARY OF CHANGES: This Change Request (CR) updates certain aspects of the hospice election statement addendum, as finalized in the FY 2022 hospice final rule (86 FR 19700). These updates reflect regulatory changes regarding timeframes on furnishing the election statement addendum and signature requirements for circumstances in which a beneficiary, dies, revokes, or is discharged.

This CR also updates the accounting years of the hospice cap calculation methodology from 2025 to 2030 in accordance with division CC, section 404 of the Consolidated Appropriations Act, 2021 (CAA 2021). The CAA 2021 has extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2030.

EFFECTIVE DATE: October 1, 2021
**Unless otherwise specified, the effective date is the date of service.*
IMPLEMENTATION DATE: December 22, 2021

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)
R=REVISED, N=NEW, D=DELETED-*Only One Per Row.*

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
R	9/20/20.2.1.2/Hospice Election Statement Addendum
R	9/90/90.2.5/ Updates to the Cap Amount

III. FUNDING:
For Medicare Administrative Contractors (MACs):
The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

Business Requirements
Manual Instruction

Attachment - Business Requirements

Pub. 100-02	Transmittal: 11056	Date: October 21, 2021	Change Request: 12491

SUBJECT: Manual Updates for Clarification on the Election Statement Addendum and Extension of the Hospice Cap Calculation Methodology

EFFECTIVE DATE: October 1, 2021
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I. GENERAL INFORMATION

A. Background: Various reports by the Office of the Inspector General highlighted issues with beneficiaries' lack of knowledge regarding hospices' limitation on coverage. These reports highlighted beneficiary confusion regarding hospice non-covered items, services, and drugs that the hospice has determined to be unrelated to the terminal illness and related conditions. To address identified vulnerabilities in coverage transparency under the Medicare hospice benefit, in the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38520), CMS finalized the content requirements for a hospice election statement addendum at § 418.24(c). The hospice election statement addendum must be furnished upon a beneficiary or representation request, and includes any items, drugs, or services that will not be covered by the hospice because the hospice has determined that these items, drugs, and services are unrelated to the terminal illness and related conditions. Since its implementation on October 1, 2020, there have been inquiries from providers asking for additional clarification on certain aspects of the hospice election statement addendum. In the FY 2022 Hospice Wage Index and Payment Rate Update final rule (86 FR 19700) we finalized regulatory text changes to certain aspects of the hospice election statement addendum.

Division CC, section 404 of the Consolidated Appropriations Act, 2021 (CAA 2021) extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2030. Therefore, for accounting years that end after September 30, 2016 and before October 1, 2030, the hospice cap amount is updated by the hospice payment update percentage rather than using the Consumer Price Index for Urban consumers (CPI–U). This provision will sunset for cap years ending after September 30, 2030, at which time the annual update to the cap amount will revert back to the original methodology.

B. Policy: The following election statement addendum regulation text changes at § 418.24(c) are effective October 1, 2021:

1. If the beneficiary dies, revokes, or is discharged within the required timeframe after requesting the addendum (i.e., within five (5) days or three (3) days of the request, depending on when the request was made), and before the hospice has furnished the addendum, the addendum is not required to be furnished and the condition for payment is considered satisfied.
2. If the beneficiary requests the addendum and the hospice furnishes the addendum within 3 or 5 days (depending upon when the request for the addendum was made), but the beneficiary dies, revokes, or is discharged prior to signing the addendum, a signature from the individual (or representative) is no longer required in order for the condition for payment to be considered met.
3. Hospices must include the "date furnished" on the addendum.
4. 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.
5. If a beneficiary requests the addendum within the first 5 days of the effective date of the election, the hospice has 5 days from the request date to furnish the addendum. If a beneficiary requests the addendum after the first 5 days of an election, the hospice has 3 days from the date of the beneficiary request to furnish the addendum.

6. If a patient or representative refuses to sign a requested addendum, the hospice must document clearly on the addendum the reason the addendum itself is not signed in order to mitigate a claims denial for this condition for payment.
7. The hospice has “3 days” rather than “72 hours” to furnish the requested addendum when the request is made after the first 5 days of the hospice election date.
8. If a non-hospice provider requests the election statement addendum, the non-hospice provider is not required to sign the addendum.

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47183), we implemented changes mandated by the IMPACT Act of 2014 (Pub. L. 113–185). Specifically, the IMPACT Act requires that, for accounting years that end after September 30, 2016 and before October 1, 2025, the hospice cap be updated by the hospice payment update percentage rather than using the CPI–U. Division CC, section 404 of the CAA 2021 has extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2030. Therefore, for accounting years that end after September 30, 2016 and before October 1, 2030, the hospice cap amount is updated by the hospice payment update percentage rather than using the CPI–U. As a result of the changes mandated by Division CC, section 404 of the CAA 2021, we finalized conforming regulation text changes at § 418.309 to reflect the new language added to section 1814(i)(2)(B) of the Act.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
12491.1	The contractors shall be aware of the revisions to Pub. 100-02, Chapter 9 related to the policies discussed in this CR.			X						
12491.2	If the Contractor selects a claim 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. The Contractor should 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).			X						

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility				
		A/B MAC			DME MAC	CEDI
		A	B	HHH		
12491.3	Medicare Learning Network® (MLN): CMS will market provider education content through the MLN Connects® newsletter shortly after CMS releases the CR. MACs shall follow IOM Pub. No. 100-09 Chapter 6, Section 50.2.4.1 instructions for distributing the MLN Connects newsletter information to providers and link to relevant information on your website. You may supplement MLN content with your local information after we release the MLN Connects newsletter. Subscribe to the "MLN Connects" listserv to get MLN content notifications. You don't need to separately track and report MLN content releases when you distribute MLN Connects newsletter content per the manual section referenced above.			X		

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A
"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Amanda Barnes, 443-651-1207 or amanda.barnes@cms.hhs.gov, Chantelle Caldwell, 410-786-1000 or chantelle.caldwell@cms.hhs.gov.

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):
The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

ATTACHMENTS: 0

20.2.1.2 Hospice Election Statement Addendum

(Rev. 11056; Issued: 10-21-21; Effective: 10-01-21; Implementation: 12-22-21)

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 election statement.

If the election statement addendum is requested *within 5 days from the* date of *a* hospice election*, then the hospice would have 5 days from that request date to furnish the addendum.* If the addendum is requested during the course of hospice care (that is, *5 days* 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 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).

If the beneficiary dies, revokes, or is discharged within the required timeframe after requesting the addendum (i.e., within 5 days or 3 days of the request, depending on when the request was made), and before the hospice has furnished the addendum, the addendum would not be required to be furnished, and this condition for payment would be considered satisfied. Likewise, if the beneficiary dies, revokes, or is discharged prior to signing the addendum (furnished within the required timeframe), no signature is required and this condition for payment would be considered satisfied.

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. The hospice must include the "date furnished" on the addendum.

Only the beneficiary (or representative) is required to sign the addendum. The non-hospice provider is not required to sign the addendum, if they are the requesting entity. If a beneficiary (or representative) refuses to sign a requested addendum, the hospice must document clearly on the addendum the reason the addendum is not signed.

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. If the 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 would result in a claims denial. However, the Medicare Administrative 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).

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:

   i. 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.

   ii. Right to Immediate Advocacy. The addendum must include language that immediate advocacy is available through the Medicare Beneficiary and Family Centered Care-Quality Improvement Organization (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. *If the individual (or representative) refuses to sign a requested addendum, the hospice must document why (on the addendum itself) and it would become a part of the medical record.*

10. *The date the hospice furnished the addendum. 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).*

Example: Mr. Brown *elects hospice* on *December 1st and requests the addendum on December* 3rd. The hospice must provide this information, in writing, to Mr. Brown within 5 days of the request. Therefore, the addendum would be required to be provided to Mr. Brown on or before *December* 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 *first 5 days* of the hospice election *date*), the hospice must provide this information, in writing, within 3 days of her request. Therefore, the addendum would be required to be provided 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 addendum would not be required to be furnished after Miss Jones has died, and this condition for payment would be considered met.

90.2.5 – Updates to the Cap Amount

(Rev. 11056; Issued: 10-21-21; Effective: 10-01-21; Implementation: 12-22-21)

The aggregate cap amount was set at $6,500 per beneficiary when first enacted in 1983. Since 1983, the $6,500 amount has been adjusted annually by the change in the medical care expenditure category of the consumer price index for urban consumers (CPI–U, United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the cap year, as required by section 1814(i)(2)(B) of the Act.

Section 1814(i)(2)(B)(i) and (ii) of the Act, as added by section 3(b) of the Improving Medicare Post-Acute Care Transformation Act (IMPACT Act) of 2014 (Pub. L. 113–185) requires, effective for the 2016 cap year (November 1, 2015 through October 31, 2016), that the cap amount for the previous year to be updated by the hospice payment update percentage, rather than the original $6,500 being annually adjusted by the change in the CPI–U for medical care expenditures since 1984. This provision *would have* sunset for cap years ending after September 30, 2025, at which time the annual update to the cap amount *would have reverted* back to the original methodology. *However, division CC, section 404 of the Consolidated Appropriations Act, 2021 (CAA 2021) has extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2030. Therefore, for accounting years that end after September 30, 2016 and before October 1, 2030, the hospice cap amount is updated by the hospice payment update percentage rather than using the CPI–U. This provision will sunset for cap years ending after September 30, 2030, at which time the annual update to the cap amount will revert back to the original methodology.*

In those situations where a hospice begins participation in Medicare at any time other than the beginning of a cap year, and hence has an initial cap calculation for a period in excess of 12 months, a weighted average cap amount is used. The following example illustrates how this is accomplished.

EXAMPLE (Cap amounts utilized in this example are for illustrative purposes only and do not reflect actual cap amounts.)

09/01/18 - Hospice A is Medicare certified.

09/01/18 to 10/31/19 - First cap period (13 months) for hospice A.

Statutory cap amount for first Medicare cap year (09/01/18 - 09/30/18) = $28,000.00

Statutory cap amount for second Medicare cap year
(10/01/18 - 09/30/19) = $28,500.00

Weighted average cap amount calculation for hospice A:

One month (09/01/18 – 09/30/18) at $28,000.00 = $28,000.00

12 months (10/01/18 - 09/30/19) at $28,500.00 = $342,000.00

13 month period $370,000.00 divided by 13 = $28,461.54 (rounded)

In this example, $28,461.54 is the weighted average cap amount used in the initial cap calculation for Hospice A for the period September 1, 2018, through September 30, 2019.

NOTE: If Hospice A had been certified in mid-month, a weighted average cap amount based on the number of days falling within each cap period is used.