Dear Ms. Murrin, Mr. Wilson, and Mr. Wright:

We read with great interest the recent Department of Health and Human Services Office of the Inspector General (OIG) report, HOSPICES SHOULD IMPROVE THEIR ELECTION STATEMENTS AND CERTIFICATIONS OF TERMINAL ILLNESS, and the Centers for Medicare & Medicaid Services’ (CMS) response. This report raises concerns about content included in hospice-developed election statements, and adequacy of communication from the hospice to the patient/family about the election and components of the Medicare hospice benefit. The National Association for Home Care & Hospice (NAHC) and its affiliated Hospice Association of America (HAA) support hospices having
a robust admission process that clearly informs the patient and family about the nature of hospice care, provides specific information about the benefit (such as the details of waived Medicare coverage and the impact of revocation, transfer and discharge), and directly involves the physician (attending and/or hospice physician) in the determination of eligibility.

We believe that the OIG’s concerns about the adequacy and variability of information contained in some hospice election forms are warranted and should be addressed. However, we also believe that inadequate information on the hospice election form related to the waiver of curative services for the terminal and related conditions may be due, at least in part, to a lack of clarity provided to hospices in CMS instructions. Specifically, there appears to be discrepancy between the Medicare Benefit Policy Manual (Publication 100-02, Chapter 9) and regulations at 418.24(b). The Medicare Benefit Policy Manual, Chapter 9, Section 20.2.1 requires only that the election statement contain, “The individual’s or representative’s (as applicable) acknowledgment that the individual understands that certain Medicare services are waived by the election”, and the services that are waived are listed in Section 10, General Requirements, of the Chapter. However, the language included in regulation at section 418.24(b) could be interpreted to require the hospice to include in the election statement the specific services waived upon election of the hospice benefit instead of just the acknowledgment of an understanding of the waived services. We note that neither CMS nor any of the MACs indicate in any resources about the hospice election statement that the services waived be included in the election statement. We urge CMS to take action to clarify this for hospices so that they can revise election statements appropriately, if necessary.

In addition, regulations at CFR 418.25 indicate, “the hospice only admits patients upon the recommendation of the medical director”; the OIG references this and expresses a concern about limited physician involvement in determining patient eligibility. The OIG points to inadequate/missing physician narrative documents or attestations as indications of insufficient physician involvement in the certifying process. While we agree that the narrative and attestation requirements must be appropriately met, we believe that it is incumbent on CMS to provide clear guidance as to what constitutes involvement of the medical director in determining patient eligibility. We have held that verbal communication or sharing of the information a physician is required at 418.25 to consider in making an eligibility decision (in addition to fulfillment of the physician narrative and attestation obligations) meets the requirement, but the OIG’s concerns raise some questions about whether this is sufficient or if the OIG has other expectations. Therefore, we believe it is important for CMS to provide a clear message on its expectations in this regard.

We believe it is important to point out that the OIG includes in its reports comments and recommendations on items for inclusion in the hospice election statement that are not required under current regulations: the OIG report indicates that 4% of the election statements had inaccurate or unclear information about how the beneficiary can revoke hospice care or the hospice may discharge the patient, and inconsistent information about the effect on the beneficiary. Neither the Conditions of Participation nor the Medicare Benefit Policy Manual require that revocation and discharge information be included on the election statement. We agree that it is crucial that hospices explain this information to patients, but point out that while some hospices do include this information in the election statement or a document that contains the election statement, oftentimes hospices include this information in other admission documents, which may not have been included in the documentation reviewed by the OIG.
Similarly, the OIG recommends that the election statement should "describe the palliative nature of hospice care". We would point out that a description of the palliative nature of hospice care is not required currently as part of the election statement. The regulation at 418.24(b)(2) states that the individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care as it relates to the individual's terminal illness is required, but this requirement does not specify that a description be provided as part of the election statement. Most hospices use various materials to explain the palliative nature of hospice care in addition to verbally explaining it. The explanatory materials are frequently lengthy (several pages or part of a booklet) and would make the election statement prohibitively long.

Based on the tone of the report, it appears that its authors object to the inclusion of certain components of the election statement in other documents such as consents / documents not labeled election statements as this practice may create confusion and hospices do not always include accurate information. We agree that accurate information about the Medicare hospice benefit, election, and the effect of election on the beneficiary is essential for hospices to provide beneficiaries. Therefore, it is critical that there be clear guidance on exactly what is to be contained in the election statement and we believe that the most effective means for ensuring this is for CMS to provide model language that relates to each element that is required as part of the election statement. Development of such model language will help to reduce confusion and conflicting interpretations by providers, CMS and its contractors as to what must be included in the hospice election statement.

As you know, hospices must abide by various federal, state, and local rules and regulations. In doing so, there are times when the state instructs hospices to include information in an election statement that CMS does not require. Hospices also have various references and resources they use to explain the palliative versus curative nature of hospice care, revocation versus discharge from the benefit, inter-hospice transfers, and waiver of Medicare benefits, as well as the effect of all of these on the beneficiary. These references and resources are often quite lengthy, as previously mentioned. It is not reasonable to expect them to be part of the election statement, and may even detract from the election itself.

The OIG recommends that CMS direct surveyors to strengthen their review of election statements and certifications of terminal illness (CTIs). CMS concurred with this recommendation. We note that the CMS State Operations Manual gives surveyors the authority, at 418.104: Content of the record and 418.102(b) Standard: Initial certification of terminal illness, to assess compliance with the requirement at 418.24 to have a signed election statement that meets requirements in the medical record and to assess compliance with what the physician considers in certifying the terminal illness and that there is a written certification. We understand the value of encouraging stronger oversight of election statements and CTIs, but we would caution that it is critical that CMS clarify apparent discrepancies between Manual and regulation referenced earlier in this letter as well as set out clear expectations for hospices PRIOR to modifications being made to surveyor requirements and training. Further, as CMS modifies its surveyor training to place greater emphasis on review of the election statement and CTI we encourage CMS to train surveyors about the actual requirements of the election statement and CTI, and to caution surveyors against any subjective expansion of the requirements.
As referenced above, we support a robust admission process under which patients are presented with accurate and thorough information about the Medicare hospice benefit and the impact of election, revocation, discharge, and transfer. We appreciate your consideration of the recommendations that we have included in this letter, and welcome the opportunity to educate providers and others on hospice regulatory requirements and expectations. Please let us know how we may be of assistance.

Sincerely,

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National Association for Home Care & Hospice

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