



**FY2021 Proposed Hospice Payment Rule and Update on
Hospice COVID-19 Flexibilities**

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Public Health and Social Services Emergency Fund

- CARES Act appropriation of \$100 Billion
- Intended to cover Covid-19 costs and lost revenues
- Available to providers of health care
- Expected to be released in a series of distributions
- First distribution of \$30 Billion started on April 10
 - <https://www.hhs.gov/provider-relief/index.html>
 - Based on 2019 Fee-for-service Medicare payments
 - All provider types (including hospice), practitioners, and suppliers
 - Approximately 6.19% of 2019 FFS Medicare revenues
 - Automatic EFT deposit via Optum (HHS contractor)

Public Health and Social Services Emergency Fund: Terms and Conditions

- Certification
 - Billed Medicare in 2019
 - Provides or provided diagnoses, testing, or care for individuals with possible or actual cases of Covid-19
 - Currently participating in Medicare
 - Payment will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the recipient only for health care related expenses or lost revenues that are attributable to coronavirus
 - Revenues not used to reimburse expenses or losses that have been reimbursed from other sources

Public Health and Social Services Emergency Fund: Terms and Conditions

- <https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions-04132020.pdf>
- Submit reports as required
- Not later than 10 days after the end of a calendar quarter a recipient of more than \$150,000 must submit a specific report with details on how monies are spent and much more
- Must retain records and cost documents

Public Health and Social Services Emergency Fund: Terms and Conditions

- Not charge out of pocket expenses greater than would have been required for in-network providers
- A wide variety of limiting laws also apply:
 - Executive pay limitations
 - Gun advocacy
 - Lobbying
 - Abortions
 - Needle exchanges
 - Many more

Observations

- Documentation, as usual, is key to accountability
- Wide range of allowable uses/justifications for accepting and keeping funds
- Revenue losses may be more impacting than Covid-19 costs
- Home health may have greater revenue losses than hospice
- Whistleblowers are watching!
- HHFMA developing a recordkeeping template

FY2021 PAYMENT ISSUES

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FY2021 Payment Issues

- Wage Index Changes
 - Major revisions to statistical areas every 10 years (based on Census)
 - FY2016 wage index values adopted new OMB area delineations (one year transition)
 - Late 2018, early 2020: additional refinements impacting wage index values

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FY2021 Payment Issues

- For FY2021, CMS will implement changes to delineations based on Sept. 2018 notice
- Significant changes
- For FY2021, CMS proposes “transition” policy: 5% cap on decrease over previous year’s wage index value

FY2021 Payment Issues

- Payment Update Percentage: Hospital MB (3.0%) less ACA-mandated productivity adjustment (0.4%) = 2.6%
- Both hospital MB and productivity adjustment values are SUBJECT TO CHANGE
- Failure to meet quality reporting requirements will result in 2% penalty

FY2021 Payment Issues

Description	FY2020 Base Payment Rate	FY2021 Base Payment Rate
Routine Home Care (days 1-60)	\$194.50	\$199.34
Routine Home Care (days 61+)	\$153.72	\$157.56
Continuous Home Care (24 hours)	\$1,395.63	\$1,430.63 (\$59.61/hour)
Inpatient Respite Care	\$450.10	\$461.48
General Inpatient Care	\$1,021.25	\$1,046.55

FY2021 Payment Issues

- Aggregate Cap (projected): \$30,743.86
- Service-Intensity Adjustment (SIA): CMS proposing to eliminate SIA budget neutrality factor

ELECTION STATEMENT & ADDENDUM

Finalized FY2020 Hospice Final Rule

- Modifications to election statement
- Election statement addendum
- **Effective October 1, 2020**

FY2021 Proposed Rule

- Model modified election statement and addendum
- Addressed concerns:
 - Sample format
 - Addendum requiring signature
 - Addendum as condition of payment and medical review

FY2021 Proposed Rule

- Beneficiary or non-hospice provider does not have to agree with the hospice's determination
- Payment requirement met if the addendum is requested and there is a signed addendum in the record

Election Statement

Finalized additions:

- 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

Election Statement

Finalized additions:

- Information about beneficiary cost-sharing for hospice service
- Notification of the 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 BFCC-QIO if the beneficiary (or representative) disagrees with the hospice's determination.

Immediate Advocacy

- Informal alternative dispute resolution process
- Quickly resolve a Medicare beneficiary's verbal complaint
- Voluntary for both beneficiary and provider

Immediate Advocacy

- QIO does not make clinical determinations regarding the hospice's determination of unrelated items, services, or drugs
- QIO cannot require services be covered, provided or paid for by Medicare

Election Statement Addendum

Purpose:

- Inform beneficiaries/families of non-covered
 - conditions,
 - items,
 - services, and
 - drugs
 to provide full coverage transparency to hospice patients and their families to assist in making treatment decisions
- Help facilitate communication and benefit coordination between hospices and non-hospice providers.

Addendum

- No proposed form
- Condition of payment
- Must be provided upon request
- **Patient Notification of Hospice Non-Covered Items, Services, and Drugs**
- Eight specific items included

Patient Notification of Hospice Non-Covered Items, Services, and Drugs

1. Name of the hospice;
2. Beneficiary's name and hospice medical record identifier;
3. Identification of the beneficiary's terminal illness and related conditions;

Patient Notification of Hospice Non-Covered Items, Services, and Drugs

4. A list of the beneficiary's current diagnoses/conditions present on hospice admission (or upon plan of care update, as applicable) 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;

Patient Notification of Hospice Non-Covered Items, Services, and Drugs

5. A written clinical explanation, in language the beneficiary and his or her representative can understand, as to why the identified conditions, items, services, and drugs are considered unrelated to the terminal illness and related conditions and not needed for pain or symptom management.

This clinical explanation would be accompanied by a general statement that the decision as to whether or not conditions, items, services, and drugs is related is made for each patient and that the beneficiary should share this clinical explanation with other health care providers from which they seek services unrelated to their terminal illness and related conditions;

Patient Notification of Hospice Non-Covered Items, Services, and Drugs

6. References to any relevant clinical practice, policy, or coverage guidelines.
7. Information on:
 - Purpose of addendum
 - Right to immediate advocacy

Patient Notification of Hospice Non-Covered Items, Services, and Drugs

8. Name and signature of Medicare hospice beneficiary (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 beneficiary's agreement with the hospice's determinations.

Patient Notification of Hospice Non-Covered Items, Services and Drugs

- Hospices to provide the addendum to:
 - Patient/representative
 - Non-hospice providers, upon request
 - Medicare administrative contractors, upon request
- Potentially used at point-of-service when hospice patients fill Part D prescriptions

Patient Notification of Hospice Non-Covered Items, Services and Drugs

Timing:

- If requested at time of election, within 5 days after the election
- Requirement considered met if patient dies with 5 days after election
- If requested during course of care, within 72 hours

Patient Notification of Hospice Non-Covered Items, Services and Drugs

- Addendum must be updated
- Beneficiary would sign and date any updates

1135 WAIVERS

Section 1135 Hospice Waivers

- Issued March 30 and April 9
- Effective March 1, 2020
- NO request or notification to CMS required

Section 1135 Hospice Waivers

- Volunteer services: Waiver of the requirement that hospices use volunteers to provide 5% of patient care hours
- Update to the comprehensive assessment: timeframe for completion extended from 15 to 21 days

Section 1135 Hospice Waivers

- Non-core Services: Waiving of requirement that hospices provide non-core services, including PT, OT, and speech-language pathology
- Onsite Aide Supervision: Waiver of the onsite RN aide supervisory visit every 2 weeks

Section 1135 Hospice Waivers

- *Hospice Aide Competency: may use pseudo-patient to demonstrate competency (instead of actual patient)
- *12-hour Annual Aide In-service Requirement: waived

FLEXIBILITIES - TECHNOLOGY

Hospice Flexibilities -- Technology

- Interim Final Rule: Response to COVID-19; issued March 30, effective March 1
- Hospice Flexibilities:
 - Use of telecommunications technology to provide “visits”
 - Use of telehealth to fulfill hospice F2F requirement
 - Use of telehealth for medical services by hospice-connected physician or NP servicing as attending

Use of Telecommunications for “Visits”

- Patients at the Routine Home Care (RHC) level
- Services delivered under the per diem
- Reasonable and necessary
- Specified on the plan of care by IDT, including technology
- Meets goals of care, patient care needs
- Can include assessments, if feasible

Use of Telecommunications for “Visits”

- No limitation on technology that can be used (including audio-only connection) provided it is appropriate and feasible to address care need
- Only in-person visits are reported on claims (with exception of Social Worker calls, as is existing policy)

Use of Telecommunications for “Visits”

- No impact on payment
- Report cost of telecommunications technologies as “other patient care services” on Worksheet A, cost center line 46 (or subscript of line 46 through 46.19), cost center code 4600 through 4619, identify cost as “PHE for COVID-19”

Hospice Use of Telehealth

- Duration of emergency, “Home” permissible as telehealth originating site
- “Telehealth” technologies for hospice: CURRENTLY must use two-way, audio/video, real time interface
- OCR HIPAA Waiver: allows FaceTime, Skype, other non-public facing technologies

Hospice Use of Telehealth

- Telehealth may be used by hospice physician or NP to perform F2F encounter
- Requirement has not changed
 - 3rd and subsequent benefit periods
 - Completed up to 30 days prior to start of benefit period
 - Administrative requirement; part of per diem
 - Cannot be performed by PA

Hospice Use of Telehealth

- Hospice physician or NP who serves as a patient's designated attending physician may also use telehealth to provide medical services
- Billing: Hospice is NOT required to use the "95" modifier

FLEXIBILITIES – HQRP, AUDITS, AND OIG

HQRP

- No HQRP updates in proposed rule
- Hospices not required to submit HIS or CAHPS data:
 - October 1, 2019–December 31, 2019 (Q4 2019)
 - January 1, 2020–March 31, 2020 (Q1 2020)
 - April 1, 2020–June 30, 2020 (Q2 2020)

Audits and OIG Investigations

Suspended

- Targeted probe and educate (TPE)
- Post-payment reviews conducted by
 - MACs
 - Supplemental Medical Review Contractor (SMRC)
 - Recovery Audit Contractor (RAC)

OIG

- Corporate Integrity Agreements (CIA) and investigations not suspended
- OIG will do all it can to work with providers on deadline extensions

*CMS may conduct medical reviews during or after PHE if there is indication of fraud

FACILITY ACCESS

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Facility Access

- Which hospice staff should be allowed access?
- Hospice staff should:
 - Pass any facility screenings
 - Utilize proper PPE
- Modifications to visit frequency
- CMS QSO Memo: QSO-20-14-NH

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Resources

- FY2021 Proposed Rule:
<https://www.govinfo.gov/content/pkg/FR-2020-04-15/pdf/2020-07959.pdf>
- FY2021 Wage Index Tables and Model Election Statement/Addendum form:
<https://www.cms.gov/medicare/medicare-fee-service-payment/hospice/hospice-regulations-and-notices/cms-1733-p>

Resources

- 1135 Waivers (as of April 9):
<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>
- Interim Final Rule – Policy and Regulatory Revisions in Response to COVID-19:
<https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-06990.pdf>
- CMS QSO Memo: QSO-20-14-NH
<https://www.cms.gov/files/document/qso-20-14-nh-revised.pdf>

Upcoming Events

COVID-19 Virtual Town Halls

Every Wednesday
March 25 - April 29

PDGM 2020 Virtual Summits

April 28 & 29

COVID-19 Legal Changes for Home Care

Every Thursday
April 23 – May 14

2020 Financial Management Conference & Expo

July 26-28
Las Vegas, NV

2020 Home Care and Hospice Conference and Expo

October 18-20
Tampa, FL

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Hospice Election Statement Example

Hospice Philosophy

I acknowledge that I have been given a full explanation and have an understanding of the purpose of hospice care. Hospice care is to relieve pain and other symptoms related to my terminal illness and related conditions and such care will not be directed toward cure. The focus of hospice care is to provide comfort and support to both me and my family/caregivers.

Effects of a Medicare Hospice Election

I understand that by electing hospice care under the Medicare Hospice Benefit, I am acknowledging that I understand the palliative rather than curative nature of hospice care, as it relates to my terminal illness and related conditions. I understand that by electing hospice care under the Medicare Hospice Benefit, I am waiving (give up) all rights to Medicare payments for services related to my terminal illness and related conditions and I understand that while this election is in force, Medicare will make payments for care related to my terminal illness and related conditions only to the designated hospice and attending physician that I have selected. I understand that services not related to my terminal illness or related conditions will continue to be eligible for coverage by Medicare; however, I also understand that services unrelated to my terminal illness and related conditions are exceptional and unusual and hospice should cover all care related to my terminal illness and related conditions needed under the hospice election.

Hospice Coverage and Right to Request “Patient Notification of Hospice Non-Covered Items, Services, and Drugs”

I acknowledge that I have been provided with information about my financial responsibility for certain hospice services (drug copayment and inpatient respite care). I understand that I have the right to request at any time, in writing, the “**Patient Notification of Hospice Non-Covered Items, Services, and Drugs**” addendum that lists the items, services, and drugs that the hospice has determined to be unrelated to my terminal illness and related conditions that would not be covered by the hospice. I acknowledge that I have been provided information regarding the provision of Immediate Advocacy through the Beneficiary and Family-Centered Care Quality Organization (BFCC-QIO) if I disagree with any of the hospice’s determinations and I have been provided with the contact information for the BFCC-QIO that services my area.

I elect to receive the “**Patient Notification of Hospice Non-Covered Items, Services, and Drugs**”

Initials _____ **Date** _____

(**Hospice:** Please provide the beneficiary with the addendum. Must be signed and dated accompanying the election statement.)

I decline to receive the “**Patient Notification of Hospice Non-Covered Items, Services, and Drugs**”

Initials _____ **Date** _____

Right to choose an attending physician

I understand that I have a right to choose my attending physician to oversee my care. My attending physician will work in collaboration with the hospice agency to provide care related to my terminal illness and related conditions.

I do not wish to choose an attending physician

I acknowledge that my choice for an attending physician is:

Physician Full name: _____ NPI (if known) _____

Office Address: _____

I acknowledge and understand the above, and authorize Medicare hospice coverage to be provided by _____ to begin on _____

(Hospice Agency)

(Effective Date of Election)

Note: The effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement. An individual may not designate an effective date that is retroactive.

Signature of Beneficiary/Representative

(Date Signed)

Beneficiary is unable to sign -Reason: _____

Witness signature

(Date Signed)

Patient Notification of Hospice Non-Covered Items, Services, and Drugs Example

Date of Request _____ **Hospice Agency** _____
 (Hospice must furnish this addendum within 5 days if requested at the time of hospice election and within 72 hours if requested during the course of hospice care.)

Patient Name _____ **MRN** _____

Diagnoses Related to Terminal Illness and Related Conditions (hospice is responsible to cover all items, services and drugs):

1.	4.
2.	5.
3.	6.

Diagnoses Unrelated to Terminal Illness and Related Conditions:

1.	4.
2.	5.
3.	6.

Non-covered items, services, and drugs determined by hospice as not related to my terminal illness and related conditions:

Items/Services/Drugs	Reason for Non-coverage

Note: The hospice makes the decision as to whether or not conditions, items, services, and drugs are related for each beneficiary. This addendum should be shared with other healthcare providers from which you seek items, services, or drugs, unrelated to your terminal illness and related conditions to assist in making treatment decisions.

Right to Immediate Advocacy

As a Medicare beneficiary you have the right to appeal the decision of the hospice agency on items not be covering because the hospice has determined they are unrelated to the individual's terminal illness and related conditions. You have the right to contact the Medicare Beneficiary and Family Centered Care-Quality Improvement Organization (BFCC-QIO) for immediate assistance.

Visit this website to find the BFCC-QIO for your area. <https://qioprogram.org/contact-zones> or call 1-800-MEDICARE (1-800-633-4227). TTY users can call 1-877-486-2048.

Acknowledgement of non-covered items, services, and drugs not related to my terminal illness and related conditions

The purpose of this addendum is to notify beneficiary (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 individuals terminal illness and related conditions. I acknowledge that I have been given a full explanation and have an understanding of the list of items, services and drugs not related to my terminal illness and related conditions not being covered by hospice. Signing this addendum (or its's updates) is only acknowledgement of receipt of the addendum (or its updates) and not necessarily agreement with the hospice's determinations.

Signature of Beneficiary/Representative

(Date Signed)

Beneficiary is unable to sign -Reason: _____

Witness signature

(Date Signed)