



The Modified Hospice Election Statement and New Election Statement Addendum September 16, 2020

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Election Statement & Addendum

Finalized in FY2020 Hospice Final Rule

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

Election Statement & Addendum

- Continued concerns regarding spending outside of the Hospice Benefit
- Purpose
 - Greater transparency
 - Hold hospices accountable

For Medicare Payment

- Services must be reasonable and necessary for the palliation and management of the terminal illness as well as related conditions;
- The individual must elect hospice care in accordance with sections 20.2 – 20.4 of this chapter;
- A plan of care must be established and periodically reviewed by the attending physician, the medical director, and the interdisciplinary group of the hospice program;
- That plan of care must be established before hospice care is provided; and
- Services provided must be consistent with the plan of care;
- Certification that the individual is terminally ill must be completed as set forth in section 20.1 of this chapter (see Chapter 9, Medicare Benefit Policy Manual CMS Pub. 100-02)

Election Statement

Finalized additions:

42 CFR 418.24

- 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.

Hospice Philosophy and Coverage of Hospice Care

By electing hospice care under the Medicare hospice benefit, I acknowledge that:

- I was given an explanation and have a full understanding of the purpose of hospice care including that the nature of 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.
- I was provided information on which items, services, and drugs the hospice will cover and furnish upon my election to receive hospice care.
- I was provided with information about potential cost-sharing for certain hospice services, if applicable.
- I understand that by electing hospice care under the Medicare hospice benefit, I waive (give up) the right to Medicare payments for items, services, and drugs related to my terminal illness and related conditions. This means 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 items, services, and drugs unrelated to my terminal illness and related conditions are exceptional and unusual and, in general, the hospice will be providing virtually all of my care while I am under a hospice election. The items, services, and drugs determined to be unrelated to my terminal illness and related conditions continue to be eligible for coverage by Medicare under separate benefits.

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- I understand that items, services, and drugs unrelated to my terminal illness and related conditions are exceptional and unusual and, in general, the hospice will be providing virtually all of my care while I am under a hospice election. The items, services, and drugs determined to be unrelated to my terminal illness and related conditions continue to be eligible for coverage by Medicare under separate benefits.

Right to Request "Patient Notification of Hospice Non-Covered Items, Services, and Drugs"

- As a Medicare beneficiary who elects to receive hospice care, you have the right to request at any time, in writing, the "Patient Notification of Hospice Non-Covered Items, Services, and Drugs" addendum that lists conditions, items, services, and drugs that the hospice has determined to be unrelated to your terminal illness and related conditions, and that will not be covered by the hospice.
- The hospice must furnish this notification within 5 days, if you request this form on the start of care date, and within 72 hours (or 3 days) if you request this form during the course of hospice care.

Beneficiary and Family-Centered Care Quality Organization (BFCC-QIO)

As a Medicare hospice beneficiary, you have the right to contact the Beneficiary and Family-Centered Care Quality Organization (BFCC-QIO) to request Immediate Advocacy if you disagree with any of the hospice's determinations. The BFCC-QIO that services your area is:

BFCC-QIO Name: _____

BFCC-QIO Phone Number: _____

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

Source: CMS Publication 100-10, Quality Improvement Organization Manual, Chapter 5, Section 5035.

Immediate Advocacy

- Verbal complaint has to be received within 6 months from date of service for care that is being addressed in this complaint
- The beneficiary complains about a matter that is unrelated to the clinical quality of health care itself but relates to items and/or services that accompany or are incidental to the medical care and are provided by a practitioner and/or provider
- Does not rise to the level of being a “gross and flagrant,” “substantial,” or “serious or urgent” quality of care concern

Immediate Advocacy

What to expect:

- Telephone call from the BFCC-QIO
- Request for consent to participate in IA process
- Sharing information verbally with the BFCC-QIO representative
- Should not extend beyond 10 days of initial attempted contact with provider.
- If beneficiary/representative not satisfied, BFCC-QIO informs them of right to file a written complaint

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

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

- No proposed form
- Condition of payment
 - Met if requested and signed copy (and updates) is in the medical record
- Must be provided upon request
- 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 Name: _____

Patient MRN: _____

Hospice Agency Name: _____

Diagnoses Related to Terminal Illness and Related Conditions

1.	5.
2.	6.
3.	7.
4.	8.

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;

Diagnoses Related to Terminal Illness and Related Conditions

1.	5.
2.	6.
3.	7.
4.	8.

Diagnoses Unrelated to Terminal Illness and Related Conditions:

1.	5.
2.	6.
3.	7.
4.	8.

Non-covered Items, Services, and Drugs Determined by Hospice to be Unrelated to Your Terminal Illness and Related Conditions:

Items/Services/Drugs	Reason for Non-coverage

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 is to 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;

Non-covered Items, Services, and Drugs Determined by Hospice to be Unrelated to Your 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 patient. As the patient or representative, you should share this list and clinical explanation 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. The hospice should provide its reasons for non-coverage in language that you (or your representative) understand.

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

6. References to any relevant clinical practice, policy, or coverage guidelines.
7. Information on the following domains

Purpose of Addendum

The purpose of the addendum is to notify the hospice beneficiary (or representative) of those conditions, items, services, and drugs the hospice will not be covering because the hospice has determined they are unrelated to the beneficiary's terminal illness and related conditions.

The addendum is subject to review and shall be updated, as needed, when the plan of care is updated in accordance with §418.56. The hospice will provide these updates, in writing, to the beneficiary (or representative).

Purpose of Issuing this Notification

The purpose of this addendum is to notify the requesting Medicare beneficiary (or representative), in writing, of those conditions, items, services, and drugs not covered by the hospice because the hospice has determined they are unrelated to your terminal illness and related conditions. If you request this notification on the effective date of the hospice election (that is, on the start date of hospice care), the hospice must provide you this form within 5 days. If you request this form at any point after the start date of hospice care, the hospice must provide you this form within 3 days.

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

Domains contd.

Right to Immediate Advocacy

The addendum must include language that immediate advocacy is available through the BFCC-QIO if the beneficiary (or representative) disagrees with the hospice's determination.

Must include contact information for the
BFCC-QIO

Right to Immediate Advocacy

As a Medicare beneficiary, you have the right to contact the Medicare Beneficiary and Family Centered Care-Quality Improvement Organization (BFCC-QIO) to request for Immediate Advocacy if you (or your representative) disagree with the decision of the hospice agency on items not covered because the hospice has determined they are unrelated to your terminal illness and related conditions.

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

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

Must include the following statement:

“We encourage you to contact your hospice provider to discuss any concerns about the diagnoses/conditions, as well as items, services, and medications listed on this form that you believe should be covered by the hospice. Beyond issues related to Medicare coverage, if you believe that your care concerns were not adequately addressed by your hospice provider, you may contact the Medicare Beneficiary and Family Centered Care Quality Improvement Organization (BFCC-QIO) to help you. While it cannot require services be covered, provided, or be paid for by Medicare, the BFCC-QIO addresses quality of care issues for people with Medicare. There are various ways the BFCC-QIO can assist you: (a) verbally engaging providers on your behalf to seek quick resolution, known as Immediate Advocacy, or (b) by having an independent physician review of your medical documentation to determine if there was a quality issue.”

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.

Signing this notification (or its' updates) is only acknowledgement of receipt of this notification (or its updates) and does not constitute your agreement with the hospice's determinations.

Signature of Beneficiary: _____

Date Signed: _____

Beneficiary is unable to sign

Signature of Representative: _____

Date Signed: _____

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

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

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

Timing:

- If requested at time of election, within 5 days after the election
 - At time of election = day of election
 - If requested after day of election = during course of care
- Requirement considered met if patient dies with 5 days after election
- If requested during course of care, within 72 hours
 - Transfers are considered ‘during course of care’

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

- Addendum must be updated
 - Hospices are free to develop any process for addendum updates to distinguish whether any updates are additions, deletions, or modifications, similar to processes hospices have in place for updates to the hospice plan of care
- Beneficiary would sign and date any updates

TABLE 9: Differences between the Advance Beneficiary Notice (ABN) and the Hospice Election Statement Addendum

Type of Document	Purpose of Document	Timing to Provide to Beneficiary	When it is Used by Hospices
Advance Beneficiary Notice (ABN)	To transfer potential financial liability to the Medicare beneficiary in certain instances.	Prior to delivery of the item or service in question. The hospice must provide enough time for the beneficiary to make an informed decision on whether or not to receive the service or item in question and accept potential financial liability	<p>If there is an item or service that is usually paid for by Medicare Part A but may not be paid for in this particular case because it is not considered medically reasonable and necessary.</p> <p>If a patient is not terminally ill</p> <p>If the level of hospice care is determined to be not reasonable or medically necessary.</p>
Hospice Election Statement Addendum	To inform the beneficiary (or representative) upon request, of any items, services, or drugs the hospice will not be providing because the hospice has determined them to be unrelated to the terminal illness and related conditions.	<p>If the addendum is requested at the time of hospice election, the hospice has 5 days from the effective date of the election to furnish this information in writing.</p> <p>If the addendum is requested during the course of hospice care (that is, after the effective date of the election), the hospice has 72 hours (or 3 days) from the date of the request to furnish this information in writing.</p>	<p>Upon beneficiary request, if the hospice has determined that certain items, services, and drugs are unrelated to the terminal illness and related conditions and not covered by hospice.</p> <p>However, these items, services, and drugs may be covered under other Medicare benefits if coverage and eligibility requirements are met.</p>

Advance Beneficiary Notice

- Medicare Claims Processing Manual, Pub 100-04, Chapter 30
- <https://www.cms.gov/Medicare/Medicare-General-Information/BNI/ABN>
- Transfers potential liability to the beneficiary
- Used for unreasonable and unnecessary items NOT unrelated items

Takeaways – Election & Addendum

- Consider how your agency determines unrelated items, services, drugs
 - Time frame and how often revisited/updated
 - Level of physician involvement
 - Documentation
 - Communication
- Review communication to patients regarding revocations
- Review communication to patients regarding unrelated items and items related but not reasonable and necessary
- Be prepared for potential changes needing to be made to the election statement and the election statement addendum

Accountability

- Penalty
 - Per CMS no penalty for content or timeframe with the addendum
 - Condition of payment met if the addendum is requested and signed copy is in the medical record
- How will reviewers assess for compliance

Frequently Asked Questions

Q: To which patients do the new requirements of the modified election statement and election statement apply?

A: The wording of the election statement can only apply to Medicare beneficiaries. Brought this to CMS' attention. CMS specifies in the final rule that the addendum only has to be provided to Medicare beneficiaries.

Frequently Asked Questions

Q: What, exactly, is CMS expecting hospices to include in the election statement that meets the requirement of "...must provide information on individual cost-sharing for hospice services." ?

A: Awaiting CMS response. Believe it to be copay (drugs and respite) or any other cost to the beneficiary.

Frequently Asked Questions

Q: Will reviewers use the date of the beneficiary/representative signature or the date the addendum was provided to determine compliance with the timeframe?

A: No penalty for timeframe at this time

Frequently Asked Questions

Q: What is the timeframe for providing the addendum to non-hospice providers and do they need to sign the addendum?

A: No mention is made of other providers having to sign the addendum and the rule does not specify timing of provision

Frequently Asked Questions

Please confirm that the proper count for the 5-day and 3-day timeframes begins on the effective date of election and this day is counted as day zero (0).

For instance, a patient with an effective election date of 10/1/2020 requesting the addendum at the time of election must have it no later than 10/6/2020. If this same patient requested the addendum during the course of care, for instance on 10/2/2020, the patient must have the addendum within three (3) days, so by 10/5/2020.

Frequently Asked Questions

Q: What is considered a timely update to the addendum?

A: The signed update is what is required for the condition of payment to be met

Frequently Asked Questions

Q: How should hospice handle/how will compliance be assessed in situations where the hospice is not aware of an unrelated item/service/drug obtained or utilized by the beneficiary?

A: Awaiting CMS' response

Resources

- Hospice final rule, wage index, and model election statement and addendum:
<https://www.cms.gov/medicare/medicare-fee-service-payment/hospice/hospice-regulations-and-notices/cms-1733-f>
- 42 CFR 418.24
- MAC websites/communications
- Future CMS guidance

Q & A

Join NAHC

NAHC is the leading trade association for home care and hospice professionals and we serve as the unified voice for the industry.

Whether you're a home care provider, a hospice administrator, or a technology company that provides services for the industry, there's a place for you at NAHC.

Join your peers and fellow leaders as part of the NAHC community today! Learn more at: <http://nahc.org/join>



Upcoming Webinars

NAHC Hospice Webinar Series:

The Modified Hospice Election Statement and NEW Election Statement Addendum – Part II

Tuesday, September 22, 2020 | 3:00-4:30pm Eastern

NAHC Hospice Webinar Series:

PEPPER: Comparative Data for Hospices

Tuesday, September 29, 2020 | 1:00-2:00pm Eastern

Upcoming Events

2020 Home Care and Hospice Conference and Expo
October 19-21, 2020



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