Election of Hospice Care
A Compliance Guide for Hospice Providers
Revised August 2014

A beneficiary who chooses the Medicare Hospice Benefit for end-of-life care must do so by signing a valid hospice election statement (Notice of Election) with a specific hospice provider of their choice per the requirement in the Medicare hospice regulations, 42 CFR 418, Subpart B, §418.24. The election statement must be completed and signed by the beneficiary (patient) or their authorized representative. A hospice provider is allowed to design and print their own election statement.

Updates to the regulations

- **FY2015 Hospice Wage Index Final Rule:** The FY2015 Hospice Wage Index Final Rule is effective October 1, 2014. [Medicare Program; FY 2015 Hospice Wage Index and Payment Rate Update; Hospice Quality Reporting Requirements and Process and Appeals for Part D Payment for Drugs for Beneficiaries Enrolled in Hospice -- CMS-1609-F] posted on the Federal Register public inspection page on August 4, 2014 and scheduled to publish in the Federal Register on August 22, 2014.
- **CR8727:** CR8727 amended the content of the Notice of Election (NOE), effective August 4, 2014.
- **Medicare Program; Hospice Care Amendments:** An update in 2011 amended the content portion of the requirement. The regulations for this requirement were reviewed and updated in December 11, 1990 and amended on November 22, 2005 with an effective date of January 23, 2006.

Filing of the Notice of Election (NOE)

- **Effective October 1, 2014,** providers will have a maximum of 5 days to have the NOE submitted and accepted by their Medicare contractor.
- **CMS strongly encourages hospices to file the NOE as soon as possible after the election or the revocation/discharge, not waiting until the fifth day.**
- **Late filing for NOE will incur “provider liable” days - from effective date of election until date NOE is filed.**
  - **Provider liable days:** This new term applies when the hospice fails to file the NOE within 5 calendar days. The hospice remains responsible for providing all care and services to the patient as detailed in the plan of care, without reimbursement from the Medicare Hospice Benefit.
- **Exceptions to the timely filing of an NOE:**
  - **CMS lists the following exceptions to the timely filing requirement:**
    - Fires, floods, earthquakes, or other unusual events that inflict extensive damage to the hospice’s ability to operate;
    - An event that produces a data filing problem due to a CMS or Medicare contractor systems issue that is beyond the control of the hospice;
A newly Medicare-certified hospice that is notified of that certification after the Medicare certification date, or which is awaiting its user id from its Medicare contractor; or,
Other circumstances determined by CMS to be beyond the control of the hospice.

- **Documenting exceptions:**
  - The hospice must document the circumstance to support a request for an exception, which would waive the consequences of filing the NOE late. Using that documentation, the hospice’s Medicare contractor will determine if a circumstance encountered by a hospice qualifies for an exception to the consequences for filing an NOE more than 5 calendar days after the effective date of election.

- **Exceptions not allowed:**
  - CMS states that exceptions to the timely NOE filing requirement will not be allowed for “personnel issues; internal IT systems issues that the hospice may experience; the hospice not knowing the requirements; and failure of the hospice to have back-up staff to file the NOE.” In these circumstances, the hospice may incur “provider liable” days.

- **Establish contingency plans for timely filing:**
  - CMS encourages hospices to establish “contingency plans for situations where administrative staff who normally file the NOEs are on vacation, unavailable due to illness, or are unexpectedly unavailable.” CMS will be monitoring the timely filing issue and may consider shortening the timeframe in future rulemaking.

- **Direct Data Entry (DDE):**
  - While NHPCO requested a review of options other than the DDE entry of the NOE, CMS determined that there would be “significant implementation challenges .... For creating an interface for a new non-claim format in the Medicare claims processing system.” CMS agreed to explore options in electronic batch submission of hospice NOEs but batch filing is not currently available.

The **bold text** is the update to this requirement outlined in the FY2015 Hospice Wage Index Final Rule (CMS-1609-F), posted for public inspection in the Federal Register on August 4, 2014, and published in the Federal Register on August 22, 2014. The implementation date is October 1, 2014.

**Content of the Election Statement**

The election statement must include the following components:

- Identification of the particular hospice that will provide care to the individual.

- The individual’s or representative’s (as applicable) acknowledgment that the individual has been given a full understanding of hospice care, particularly the palliative rather than curative nature of treatment (The bold text is the update to this requirement outlined in CR 7337 issued on March 2, 2011 with an effective date of March 23, 2011).
The name of the attending physician with an acknowledgment that the identified attending physician was the patient's/representative's choice. (The bold text is the update to this requirement outlined in the FY2015 Hospice Wage Index Final Rule (CMS-1609-F), posted for public inspection on August 4, 2014 and published in the Federal Register on August 22, 2014. Implementation date is October 1, 2014).

The individual's or authorized representative's (as applicable) acknowledgment that the individual understands that certain Medicare services are waived by the election.

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 effective date of the election statement. An individual may not designate an effective date that is retroactive. (The bold text is the update to this requirement outlined in CR 8727 issued on May 1, 2014 with an effective date of August 4, 2014).

The signature of the individual or authorized representative. (A verbal election is not allowable).

Missing components of the elections statement will result in a technical denial of the claim if it is reviewed by a Medicare Administrative Auditor or other Medicare contractor.

**Duration of the Election**

Hospice care is available for two 90-day periods followed by an unlimited number of 60-day periods during the remainder of the hospice patient's lifetime as long as they continue to meet hospice eligibility. However, a beneficiary may voluntarily terminate (revoke) his or her hospice election period at any time. Election/termination dates are retained in the Medicare Common Working File (CWF). An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. Remains in the care of a hospice;
2. Does not revoke the election; and
3. Is not discharged from the hospice.

For Medicare payment purposes, an election for Medicare hospice care must be made on or after the date that the hospice provider is Medicare-certified. As with any election, the hospice must fulfill all other admission requirements, such as certification or recertification, any required face-to-face encounters, or CoP assessments. See also Pub. 100-04, Medicare Claims Processing Manual, chapter 11, section 20.1.1. (The bold text is the update to this requirement outlined in CR 8727 issued on May 1, 2014 with an effective date of August 4, 2014).

**NOTE:**

★ Once a hospice chooses to admit a Medicare beneficiary, it may not automatically or routinely discharge the beneficiary at its discretion, even if the care promises to be costly or inconvenient, or the State allows for discharge under State requirements.
★ The election of the hospice benefit is the beneficiary’s choice, **NOT** the hospice provider’s choice, and the hospice cannot revoke the beneficiary’s election.
* The hospice cannot request or demand that the patient revoke his/her hospice election.

**Waiver of other benefits**

For the duration of an election of hospice care, an individual waives all rights to Medicare Part A for the following services:

(i) Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice).

(ii) Any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or that are equivalent to hospice care except for services—
   a. Provided by the designated hospice;
   b. Provided by another hospice under arrangements made by the designated hospice;

(iii) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

**Re-election of the Medicare Hospice Benefit**

- An individual or representative may revoke the individual's election of hospice care at any time during an election period.
- If an election has been revoked by the patient, an individual may at any time elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.
- If the patient re-elects the hospice benefit, a new benefit period begins and the patient is eligible for any other election period that is still available.

The **bold text** is the update to this requirement outlined in CR 8727 issued on May 1, 2014 with an effective date of August 4, 2014.

**Election by Skilled Nursing Facility (SNF) and Nursing Facilities (NFs) Residents and Dually Eligible Beneficiaries**

A Medicare beneficiary who resides in an SNF or NF may elect the hospice benefit if:

- The residential care is paid for by the patient; or
- The patient is eligible for Medicaid and the facility is being reimbursed for the beneficiary’s room and board care by Medicaid, and
• The hospice and the facility have a written agreement under which the hospice takes full responsibility for the professional management of the individual’s hospice care and the facility agrees to provide room and board to the individual.

**Hospice and Managed Care Enrollees**

• A **managed care** enrollee may elect the hospice benefit. After the hospice election, Medicare pays the hospice for hospice services and pays for services of the **managed care** attending physician, who may be a nurse practitioner, and services not related to the patient’s terminal illness, **through the fee-for-service system**. (See 42 CFR 417.531 and 417.585.)

• Once under a hospice election, a managed care patient may also choose to use a provider outside of his or her managed care organization for care unrelated to the terminal illness or related conditions, or as the attending physician. See Pub. 100-04, *Medicare Claims Processing Manual, chapter 11, section 40* for requirements for physician billing.

• Once a managed care enrollee has elected hospice, all his or her Medicare benefits revert to fee-for-service, though the enrollee still remains on managed care for any additional benefits provided by his or her managed care plan, such as dental or vision coverage.

• The Medicare hospice benefit, through fee-for-service Medicare, covers all hospice care from the effective date of election to the date of discharge or revocation.

• During the hospice election, fee-for-service Medicare also covers attending physician services and all care unrelated to the terminal illness. Upon discharge or revocation, fee-for-service Medicare continues to cover the beneficiary through the end of the month when the beneficiary revokes or is discharged from hospice alive.

• At the start of the month following revocation or discharge, all billing and coverage revert back to the managed care plan (see Pub 100-04, *Medicare Claims Processing Manual, chapter 11, §30.4*).

The **bold text** is the update to this requirement outlined in CR 8727 issued on May 1, 2014 with an effective date of August 4, 2014. CR 8727 updates Pub 100-04, *Coverage of Hospice Services Under Hospital Insurance*, chapter 9.

**Administrative Considerations**

• Hospices obtain the Notice of Election (NOE) from the patient/representative and submit it to the Medicare contractor via DDE. DDE transmits the information to the Common Working File (CWF) in electronic format. Once the initial election is processed, the CWF maintains the beneficiary in hospice status until death or until an election termination is received.
• If a patient enters hospice care before the month he/she becomes entitled to Medicare benefits, e.g., before age 65, the hospice should not send the election notice before the first day of the month in which he/she becomes 65.

• While a hospice election is in effect, certain types of claims may be submitted by either a hospice provider, or a provider treating an illness not related to the terminal condition, to a fee-for-service contractor of CMS. These claims are subject to the usual Medicare rules of payment, but only for the following services:

1. Hospice services covered under the Medicare hospice benefit if billed by a Medicare hospice;

2. Services of the enrollee’s attending physician if the physician is not employed by or under contract to the enrollee’s hospice;

3. Services not related to the treatment of the terminal condition while the beneficiary has elected hospice; or

4. Services furnished after the revocation or expiration of the enrollee’s hospice election until the full monthly capitation payments begin again. Monthly capitation payments will begin on the first day of the month after the beneficiary has revoked their hospice election.

References


