March 8, 2016

TO:    Sean Cavanaugh, Director, Center for Medicare
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       Randy Thondset, Division of Home Health, Hospice and HCPCS
       Wilfred Gehne, Provider Billing Group, Division of Institution Claims Processing
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FROM:  Judi Lund Person, Vice President, Regulatory and Compliance, NHPCO

RE:     CR8877 -- NOE/NOTR Concerns, Examples, and Recommendations

The National Hospice and Palliative Care Organization (NHPCO) is pleased to follow up on our
discussions with CMS staff in December 2015 about the issues related to the Notice of Election (NOE)
and Notice of Termination/Revocation (NOTR) policies implemented through the FY2015 Hospice Wage
Index Final Rule and CR8877. Over the last 18 months, we have formed a workgroup of our members
and collected data from providers to quantify the issues. We have met with the Medicare contractors,
and with CMS claims processing and payment policy folks to express our growing concerns. Providers
report that simple keying errors result in days and weeks of unpaid care, and MACs continue to report a
large volume of exception requests, even 17 months after the implementation of the CR. We believe
that this is not what CMS intended when this policy was implemented in October 2014.

We submit this discussion of the NOE/NOTR issues, concerns and examples from providers in the field,
along with recommended changes to CR8877 found in Attachment A on page 9 of this document.

When CR 8877 was first issued with an effective date of 10/01/14, one of its primary purposes was to
insure that hospice providers entered their notices of election (NOEs) and notices of termination or
revocation (NOTRs) in a timely manner. Due to the CR’s strict requirements, the limitations of the
Medicare system, and inexorable human error, hospice providers throughout the country have
cumulatively lost millions of dollars in the seventeen months since this CR was issued.

NHPCO initially fully supported, and continues to support, the philosophical underpinnings of this CR –
to ensure that other Medicare providers are aware of the hospice election as soon as it occurs. NHPCO
believes that it is critical to have a system that notifies all Medicare providers when a Medicare
beneficiary has elected the hospice benefit. We also believe that it is important to prevent improper
payments for services. However, we also believe the NOE/NOTR process CMS has implemented is
burdensome, unfair, and flawed. That hospices should undergo a financial penalty of this magnitude for technical errors, and beyond what any other Medicare provider type is subject to, raises serious and legitimate concerns.

NHPCO and the National Association for Home Care and Hospice (NAHC) jointly sponsored a survey of members asking for feedback on the implementation of CR8877 and asked for data on Additional Development Requests (ADRs) for NOE/NOTR problems during the period January 1 through June 30, 2015. The chart below shows the significance of this issue.

<table>
<thead>
<tr>
<th>Survey Details</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospices participating</td>
<td>400</td>
</tr>
<tr>
<td>NOEs submitted January – June 2015</td>
<td>186,023</td>
</tr>
<tr>
<td>RTP from MAC</td>
<td>7,500 or 4%</td>
</tr>
<tr>
<td>Unpaid days of care</td>
<td>89,211</td>
</tr>
<tr>
<td>$$ value of unpaid days @ FY2015 RHC rate of $159.34</td>
<td>$14,214,880</td>
</tr>
</tbody>
</table>

The “Return to Provider” (RTP) resulted in “provider liable days” where the hospice is not paid for days of care until the MAC officially accepts the NOE. For this six month period, with only 400 hospices reporting, the patient care days for which revenue was lost totaled 89,211 days. If the national routine home care rate (RHC) was applied, the lost revenue was more than $14 million dollars. **We note that the hospice care was provided to these Medicare beneficiaries and no Medicare payments were received, even when providers filed the NOE within the 5 day time requirement.**

We do not believe that the significant financial harm experienced by hospice providers is consistent with CMS’ original intent, and thus, would like to recommend some basic changes to CR8877, so that it will be less punitive while still being effective in insuring that hospice providers enter their NOEs and NOTRs in a timely manner. **To our knowledge, no other provider type is so severely penalized for minor administrative errors or due to Medicare system limitations. They are simply allowed to correct their claims and rebill them.**

NHPCO’s recommendations include changes and clarifications to the following in CR8877:

1. **Definition of timely-filed NOE**: A timely-filed NOE is an NOE that is submitted to the Medicare contractor within 5 calendar days after the hospice admission date.

2. **Definition of acceptance by the MAC**: In the case of the NOE submitted to the Medicare contractor within 5 calendar days after the hospice election, but the acceptance is delayed by the Medicare claims processing system for whatever reason, when the contractor has accepted the NOE, the days of payment shall include all days from the hospice admission date.
3. **Patient death within 5 days after admission:** If a patient dies within 5 days after admission to hospice, if the NOE has not yet been filed, the hospice provider will not be liable for any days.

4. **Timely filing of NOTR:** A timely-filed NOTR is an NOTR that is submitted to the Medicare contractor within 5 calendar days after the effective date of discharge or revocation. There is no requirement for it to be accepted by the MAC in order to be considered filed timely.

5. **Circumstances that may qualify for an exception:** We believe that an additional scenario should be added to the exception request list: (4) the patient was not a Medicare beneficiary at the time of hospice election, and the Medicare enrollment is retroactive.

**Additional Development Requests (ADRs) for Non-Medical Record Requests**

Prior to CR8877, additional development requests (ADRs) for non-medical record requests were rare. However, now some late NOEs are triggering non-medical record ADRs with certain MACs. Whereas ADRs requiring medical documentation allow a 45-day window for completion, ADRs for NOE issues are only allowed 14 calendar days. Hospices report that ADRs are received a few days after they are formally dated, and the 14 calendar day requirement often does not allow the hospice provider to respond timely for the ADR request, since many of these requests require additional investigation. This is a significant administrative burden for hospice providers.

We request that ADRs for NOEs allow the same timeframe (45 calendar days) as medical records requests so that there is no confusion about the timeframe or the due date.

**Common Reasons NOEs Are Submitted within 5 Day Window but Miss the Timely Filing Requirement**

- **Keying errors**
  - **Examples:**
    - **Transposed numbers.** Since the HIC number is individually keyed into the Fiscal Intermediary Shared System (FISS) system, one transposed number in the patient’s HIC number will cause the NOE to RTP. No days of care will be paid until the transposed number is corrected.
    - **Wrong date of birth.** Wrong date could be provided by the family, be incorrect in the FISS system, or misread or mis-keyed by hospice billing staff.
      - Beneficiary's birthday is 01/01/1933 and a hospice submits the NOE with the beneficiary birthday as 01/10/1933. The misplaced keystroke creates a technical error and the NOE is returned to the provider to correct. No days of care will be paid until the date of birth is corrected and matches the Medicare system.
    - **Misspelled name.** Providers have had multiple issues with misspelled names, all resulting in days of care not being paid until the misspelling is corrected.
      - The 7th letter of the last name is the only mistake on the NOE. The NOE won’t RTP, but will take time to cycle through the various host sites. This can take 2-3 weeks. During this time, the hospice will be unaware that there is a problem with the submitted NOE. When
the provider is notified, through the RTP process that there is a problem with the name, 2-3 weeks of “provider liable days” have accumulated.

- **NOE entered under the wrong NPI.** The provider has multiple NPIs under its Federal Tax ID. The beneficiary is entered under the wrong NPI. Often this type of error is not identified until the 1st claim rejects. At that point, the provider has to cancel the original NOE, re-enter the NOE under the correct NPI, and resubmit the claim. In the meantime, up to 2-3 months of revenue is lost.

- **Any other keying error.** There are many other opportunities for keying errors during the process of NOE entry into the FISS system.
  
  - **NHPCO Recommendation:** We believe that many of these issues would be minimized if there was a method for CMS to allow the electronic submission of NOEs, rather than the Fiscal Intermediary Standard System (FISS) data entry system, where each NOE is individually and manually entered into the system. This would significantly reduce or eliminate many keying errors. We strongly urge CMS to mandate the necessary system changes to allow the electronic submission of NOEs.

- **Admission date corrections**
  
  - **Examples:**
    
    - NOE is entered timely with information the provider had at the time; the clinical team then changes the admission date in the EMR after the NOE was submitted but before the first claim is submitted; the claim is rejected because it didn’t match the NOE. Because the admission date on the NOE and claim do not match, a new NOE must be submitted and the NOE is now not considered timely.
    
    - Provider discovers that an admission date is incorrectly entered on the NOE, but cannot correct it until the NOE has been accepted by the MAC. In some cases, the acceptance by the MAC is after the 5 day timely filing limit and the provider has “provider liable days” for an error they could have corrected during the 5 day filing window.

  - **NHPCO Recommendation:** Due to Medicare system limitations, hospice providers cannot correct errors they have identified during the 5 day timely filing window, but must wait until an NOE has been accepted before the provider can cancel the NOE and resubmit it. We request that CMS develop a method for providers to correct a submitted NOE that is not yet processed during the 5 day timely filing period, so that timely filing status is preserved that NOE processing is not disrupted.

- **Wrong diagnosis or attending physician**
  
  - **Examples:**
    
    - Provider enters the wrong attending physician name on the NOE.
    
    - Provider makes a NPI data entry error for the physician.
    
    - Provider enters the wrong diagnosis on the NOE or mis-keys one number on the ICD-10 code.
NHPCO Recommendation: Due to Medicare system limitations, hospice providers have to wait until an NOE has been accepted before the provider can cancel the NOE and resubmit it. We request that CMS develop a method for providers to correct a submitted NOE that is not yet processed during the 5 day timely filing period, so that timely filing status is preserved and the NOE processing is not disrupted.

Sequential billing

Examples:

- One hospice providing care: For a hospice where a patient is discharged or revokes and comes back to the same hospice within a few days, sequential billing requirements often do not track with the patient’s movements and the NOTR and second NOE filing process are delayed.
  - A hospice patient revokes their hospice benefit to seek additional treatment, or for another reason, and quickly returns to the hospice originally providing their care. The patient must be readmitted in a new benefit period, but this cannot be done until the NOTR is filed and accepted by the MAC. This significantly delays the submission of the second NOE and makes timely filing impossible.

- Two hospices providing care: When two hospices are involved in the patient’s care, the challenges are exponentially increased.
  - A hospice patient is discharged from one hospice and is admitted to another hospice within a few days. The second hospice cannot submit the NOE until the first hospice submits an NOTR. If the first hospice does not submit an NOTR timely, the second hospice cannot submit an NOE, creating an administrative burden for the admitting hospice and often results in missing the 5 day timely filing deadline. An example of the complexity of this issue follows:
    - A hospice, (B) has admitted a beneficiary previously cared for by hospice (A), and the NOE was timely accepted. After providing four months of care, hospice (B) was notified by hospice (A), that (A) had not filed an NOTR. Hospice (B) was forced by the MAC to back out all their claims so hospice (A) could file the NOTR. Hospice (B) had to refile, including a new NOE, which was now considered late and denied. Hospice (B) had to appeal not once but twice on what had previously been accepted and paid.

NHPCO Recommendation: When a patient cycles in and out of the hospice within a few days, either with the same hospice or with two different hospices, the NOE/NOTR/NOE filing process has proven to be a significant administrative burden with many steps in the process. In this scenario, the sequential billing requirement often means that NOEs and NOTRs process out of order, creating multiple opportunities for 5 day filing deadline to be missed. We request that CMS look for
ways to simplify this process and honor the initial timely filing of NOEs when they must be resubmitted.

- **Establishing a Benefit Period**

  The sequential billing issue described above is exacerbated by the requirement to establish a benefit period before an NOTR or subsequent NOE will process. NHPCO lists this issue specifically because of its importance and the challenges it is causing for hospice providers. The issue of “establishing a benefit period” has proved to be one of the most challenging when the hospice is attempting to meet the timely filing deadlines, especially when a discharge or revocation occurs, followed by a readmission. The Medicare Administrative Contractors (MACs) worked together to develop a frequently asked question (FAQ) specifically on this issue in CR8877. The following Q&A, supplied by the MACs, explains the problem. The example that follows the Q&A shows how challenging this can be in a “real life” situation.

  - **Question:** Will an NOTR process if the discharge/revocation occurs during a benefit period that has not yet been established at the CWF?

  - **Answer:** No. The NOTR will RTP with a reason code indicating that the revocation/termination date does not match a benefit period posted to the CWF. In order for an NOTR to process, the benefit period in which the patient was discharged has to be established in the CWF. For example, if the beneficiary revokes or is discharged on November 2nd, but the current benefit period posted in the CWF ends on October 27th, the claim for the October billing period must be submitted to get the subsequent benefit period posted to the CWF before an NOTR will process. Hospices should not wait to submit the sequential claims that are required to discharge the patient unless they are awaiting documentation that is required before they can submit the claim. A hospice can adjust a claim at a later date if necessary.

  As a reminder, the NOTR only has to be submitted if the final claim has not yet been submitted. If the final claim can be submitted as soon as the next benefit period has posted to CWF, the provider should submit the final claim, and the NOTR is not required. In the example above, the final claim for November 1st through November 2nd could be submitted as soon as the benefit period beginning October 28th is posted to CWF. If the claim cannot be submitted as soon as the October 28 benefit period has posted to CWF, the NOTR should be submitted.

  - **Example:**

    - Patient discharged 6/7/15. The hospice could not file a final claim because they were waiting on the written certification for the new benefit period which just started on 5/28. In this instance it would be
improper for the hospice to submit a claim since they cannot file without the written certification on file.

- On 6/10 they submitted an NOTR, but it rejected because the new benefit period had not been established because there was not an open benefit period on file. The prior benefit period ended on 5/28 by no action of the hospice, just because the number of days in the period was exhausted.
- The patient was readmitted a few days later.
- On 6/16 the provider resubmitted the May claim, then the NOTR again and then the new NOE. For some reason the NOE processed and posted to the CWF before the May claim and NOTR. Subsequently the May claim and NOTR rejected.
- Per the MAC, the NOE processed because there was no open benefit period for it to hit up against to trigger a rejection. But it isn’t clear why the NOE processed before the May claim.
- To get the May claim (another sequential billing issue) to process they had to back out the NOE. When they resubmitted the NOE it was late.
- Their exception request was denied because it was provider error for not submitting the NOTR timely – which couldn’t happen because the benefit period wasn’t established.
- If the reason for delaying the final claim is awaiting required information such as drug information or visit data, the MAC indicates the hospice should submit the claim and adjust it later. This creates an added administrative burden for the hospice to have to process a claim twice.

**NHPCO Recommendation:** The establishment of a new benefit period is a critical issue for providers. We request additional discussion with CMS on the ways that this requirement can be met and disruption to the NOE/NOTR process can be minimized.

*Dark Days*

Hospice providers report that even when the FISS is in a “dark days” period, the calendar days still count toward the 5 day timely filing limitation and an exception request must be filed in order to eliminate the provider liable days.

**Examples:**

- **Dark days around the holidays:** NOEs were submitted on December 31, just prior to the dark days for FISS which ran from January 1 to January 5. On January 6, all NOEs submitted on December 31 had not been accepted and all were considered untimely.
- **FISS system overload near dark days:** On certain days, particularly when the Medicare system will be going down for “dark days” around the holidays, the FISS system does not process NOEs on the date they are submitted within the hours that the system is supposed to be accepting NOEs. For example, a hospice submitted a batch for April 1, 2015 admissions on April
6, 2015, and 15 patients from that batch had their NOE received by Medicare on April 7th, which is day 6. In this particular case, the batch was submitted to Medicare at 2:59 pm on April 6. The FISS system was closed from Friday April 3rd through Sunday April 5th. Similarly, a hospice submitted a batch of NOEs for January 1, 2015 admissions on January 6, 2015 and 7 patients from that batch had their NOE received by Medicare on January 7th, which is day 6. In this particular case, the batch was submitted to Medicare at 3:56 pm on January 6. Medicare was closed from Thursday January 1st through Sunday, January 4, 2015. Issues with dark days resulted in “late” filed NOEs and denials of payment.

- **NHPCO Recommendation:** NHPCO believes that if the FISS system overloads with submissions or the system availability is limited due to “dark days”; this would qualify as a system processing error beyond the control of the hospice and should be an exception if providers can demonstrate that the NOE was submitted accurately and timely.

We trust that this information has been beneficial in helping CMS better understand the many issues experienced by many hospices across the country on a recurring basis. It is imperative that CMS act swiftly to implement system changes to resolve these issues. Our recommended edits to CR8877, found in Attachment A, will resolve many of the most egregious issues with this regulation. Providers should not continue to be penalized when they make good faith efforts to adhere to the NOE/NOTR requirements. We strongly urge CMS to give serious consideration to making changes to reduce the financial burden this has placed on hospices due to what is often a simple, unintentional error.

NHPCO appreciates your attention to this matter and are available to engage in discussions around these issues and provide additional information as solutions are identified. For follow up questions and discussion, please contact Judi Lund Person at jlundperson@nhpco.org.
NHPCO Suggestions for Changes to the NOE/NOTR Process
Excerpts from CR8877
Published August 22, 2014

I. GENERAL INFORMATION

B. Policy:

Timely-filed hospice NOEs shall be filed within 5 calendar days after the hospice admission date. A timely-filed NOE is an NOE that is submitted to the Medicare contractor and accepted by the Medicare contractor within 5 calendar days after the hospice admission date. While a timely-filed NOE is one that is submitted to and accepted by the Medicare contractor within 5 calendar days after the hospice election, posting to the CWF may not occur within that same time frame. The date of posting to the CWF is not a reflection of whether the NOE is considered timely-filed. In instances where an NOE is not timely-filed, once the Medicare contractor has accepted the NOE, Medicare shall not cover and pay for the days of hospice care from the hospice admission date to the date the NOE is submitted to the Medicare contractor. In the case of the NOE submitted to the Medicare contractor within 5 calendar days after the hospice election, but the acceptance is delayed by the Medicare claims processing system for whatever reason, when the contractor has accepted the NOE, the days of payment shall include all days from the hospice admission date. If a patient dies within 5 days after admission to hospice, if the NOE has not yet been filed, the hospice provider will not be liable for any unpaid days.

Only in the instance when a provider does not meet the timely filing requirement will the days before filing these days shall be a provider liability, and the provider shall not bill the beneficiary for them. The hospice shall report these non-covered days on the claim with an occurrence span code 77, and charges related to the level of care for these days shall be reported as non-covered, or the claim will be returned to the provider.

If a hospice fails to file a timely-filed NOE, it may request an exception which, if approved, waives the consequences of filing an NOE late. The four circumstances that may qualify the hospice for an exception to the consequences of filing the NOE more than 5 calendar days after the hospice admission date are as follows:

1. fires, floods, earthquakes, or other unusual events that inflict extensive damage to the hospice’s ability to operate;

2. 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, including those events where the system does not accept the NOE filing timely, such as during dark days;

3. 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;
4. The patient was not a Medicare beneficiary at the time of hospice election, and the Medicare enrollment is retroactive, or.

5. Other circumstances determined by the Medicare contractor or CMS to be beyond the control of the hospice.

* For newly Medicare certified hospices, submission of the NOE for retroactive admissions should be allowed as long as they meet the timely filing requirements based on the date of the receipt of their provider number or user ID.

If a hospice beneficiary is discharged alive or if a hospice beneficiary revokes the election of hospice care, the hospice shall file a timely-filed Notice of Election Termination / Revocation (NOTR) using type of bill 8xB, unless it has already filed a final claim. A timely-filed NOTR is an NOTR that is submitted to the Medicare contractor and accepted by the Medicare contractor within 5 calendar days after the effective date of discharge or revocation. While a timely-filed NOTR is one that is submitted to and accepted by the Medicare contractor within 5 calendar days after the hospice discharge or revocation, posting to the CWF may not occur within that same timeframe. The date of posting to the CWF is not a reflection of whether the NOTR is considered timely-filed. AN NOTR (type of bill 8xB) contains the same data elements as an NOE (type of bill 8xA) and is entered via Direct Data Entry in the same way. Hospices continue to have 12 months from the date of service in which to file their claims timely.

<table>
<thead>
<tr>
<th>X-Ref Requirement Number</th>
<th>Recommendations or other supporting information:</th>
</tr>
</thead>
<tbody>
<tr>
<td>8877.3</td>
<td>An example of a systems issue exceptional circumstance would include sequential billing requirements that necessitate a second provider’s removing its timely-filed NOE and any claims so that a previous provider can bill. Upon resubmitting the NOE, the second provider’s NOE would appear to the system to be filed late when in fact it wasn’t. In this scenario, the Medicare contractor should approve an exception.</td>
</tr>
<tr>
<td>8877.4</td>
<td>Example of circumstances which should not qualify as exceptional circumstances include hospice 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.</td>
</tr>
</tbody>
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20.1.1 - Notice of Election (NOE) - Form CMS-1450
(Rev.3032, Issued: 08-22-14, Effective: 10-01-14, ICD-10 Upon Implementation of ICD – 10, Implementation: 10-01-14, ICD-10 Upon Implementation of ICD -10)
When a Medicare beneficiary elects hospice services, hospices must complete form locators identified in section 20.1.2 for the Uniform (Institutional Provider) Bill (Form CMS-1450), which is an election notice. In addition, the hospice must complete the Form CMS-1450 when the election is for a patient who has changed an election from one hospice to another.

Timely-filed hospice NOEs shall be filed within 5 calendar days after the hospice admission date. A timely-filed NOE is an NOE that is submitted to the Medicare contractor and accepted by the Medicare contractor within 5 calendar days after the hospice admission date. While a timely-filed NOE is one that is submitted to and accepted by the Medicare contractor within 5 calendar days after the hospice election, posting to the CWF may not occur within that same time frame. The date of posting to the CWF is not a reflection of whether the NOE is considered timely-filed. In instances where an NOE is not timely-filed, Medicare shall not cover and pay for the days of hospice care from the hospice admission date to the date the NOE is submitted to, and accepted by, the Medicare contractor. In the case of the NOE submitted to the Medicare contractor within 5 calendar days after the hospice election, but the acceptance is delayed by the Medicare claims processing system for whatever reason, when the contractor has accepted the NOE, the days of payment shall include all days from the hospice admission date. Only in the instance when a provider does not meet the timely filing requirement will the days before filing these days shall be a provider liability, and the provider shall not bill the beneficiary for them. The hospice shall report these non-covered days on the claim with an occurrence span code 77, and charges related to the level of care for these days shall be reported as non-covered, or the claim will be returned to the provider.

If a hospice fails to file a timely-filed NOE, it may request an exception which, if approved, waives the consequences of filing an NOE late. The four circumstances that may qualify the hospice for an exception to the consequences of filing the NOE more than 5 calendar days after the hospice admission date are as follows:

1. fires, floods, earthquakes, or other unusual events that inflict extensive damage to the hospice’s ability to operate;

2. 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, such as during dark days;

3. 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;

4. The patient was not a Medicare beneficiary at the time of hospice election, and the Medicare enrollment is retroactive, or,

4.5. other circumstances determined by the Medicare contractor or CMS to be beyond the control of the hospice.

If one of the four circumstances described above prevents a hospice from filing a timely-filed NOE, the hospice may request an exception which, if approved, would waive the consequences of filing the NOE late.

Even if a hospice believes that exceptional circumstances beyond its control are the cause of its late-filed NOE, the hospice shall file the associated claim with occurrence span code 77 used to identify the non-covered, provider liable days. The hospice shall also report a KX modifier with the Q HCPCS code reported on the earliest dated level of care line on the claim. The KX modifier shall
prompt the Medicare contractor to request the documentation supporting the request for an exception. Based on that documentation, the Medicare contractor shall determine if a circumstance encountered by a hospice qualifies for an exception.

If the request for an exception is approved by the Medicare contractor, the Medicare contractor shall process the claim with the CWF override code and remove the submitted provider liable days, which will allow payment for the days associated with the late-filed NOE. If the Medicare contractor finds that the documentation does not support allowing an exceptional circumstance, the Medicare contractor shall process the claim as submitted.

Hospices must send the Form CMS-1450 Election Notice to the Medicare contractor by mail, messenger, or direct data entry (DDE) depending upon the arrangements with the Medicare contractor. The NOE should be filed as soon as possible after a patient elects the hospice benefit. 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.

If a hospice beneficiary is discharged alive or if a hospice beneficiary revokes the election of hospice care, the hospice shall file a timely-filed Notice of Election Termination / Revocation (NOTR) using type of bill 8xB, unless it has already filed a final claim. A timely-filed NOTR is an NOTR that is submitted to the Medicare contractor and accepted by the Medicare contractor within 5 calendar days after the effective date of discharge or revocation. While a timely-filed NOTR is one that is submitted to and accepted by the Medicare contractor within 5 calendar days after the hospice election, posting to the CWF may not occur within that same timeframe. The date of posting to the CWF is not a reflection of whether the NOTR is considered timely-filed. A NOTR (type of bill 8xB) is entered via Direct Data Entry in the same way as an NOE (type of bill 8xA). Hospices continue to have 12 months from the date of service in which to file their claims timely.

**Occurrence Span Code and Dates**

**Provider Liability Periods Using Occurrence Span Code 77:** Hospices must use occurrence span code 77 to identify days of care that are not covered by Medicare due to:
- **Untimely physician recertification.** This is particularly important when the non-covered days fall at the beginning of a billing period other than the initial certification period.
- **Late-filing of a Notice of Election (NOE).** A timely-filed NOE is an NOE that is submitted to the Medicare contractor and accepted by the Medicare contractor within 5 calendar days after the hospice admission date. In the case of the NOE submitted to the Medicare contractor within 5 calendar days after the hospice election, but the acceptance is delayed by the Medicare claims processing system for whatever reason, when the contractor has accepted the NOE, the days of payment shall include all days from the hospice admission date. When the hospice files an NOE late, Medicare shall not cover and pay for the days of hospice care from the hospice admission date to the date the NOE is submitted to and accepted by the Medicare contractor. The date the NOE is submitted to and accepted by the Medicare contractor is an allowable day for payment.
Example:
Admission date is 10/10/2014 (Fri).
Day 1 = Sat. 10/11/2014
Day 2 = Sun. 10/12/2014
Day 3 = Mon. 10/13/2014
Day 4 = Tues. 10/14/2014
Day 5 = Weds. 10/15/2014 10/15/2014 is the NOE Due Date.
IF NOE Receipt date is 10/16/2014, the hospice reports 10/10- 10/15 as non-covered days using occurrence span code 77 or CWF rejects the claim back to FISS. The contractor returns the claim to the provider for correction.

Modifiers

The following modifier may be used to identify requests for an exception to the consequences of not filing the NOE timely for claims with dates of service on or after October 1, 2014:
KX - Requirements specified in the medical policy have been met. This modifier is used to indicate that the hospice has documentation indicating an exception condition applies. The hospice reports the KX modifier with the Q HCPCS code on the earliest dated level of care revenue code line on the claim (revenue code 0651, 0652, 0655 or 0656). When this modifier is present, the Medicare contractor will request the documentation from the hospice (see section 20.1.1).