To: NHPCO Provider Members  
From: NHPCO Regulatory Team  
Date: September 15, 2016  
RE: OIG Report on Election Statements and Certifications of Terminal Illness

Summary at a Glance:
The Inspector General of the Department of Health and Human Services (OIG) released a report on September 15, 2016 entitled “Hospices Should Improve Their Election Statements and Certifications of Terminal Illness.” This report focused on findings in two areas – election statements and physician certification and attestation. Read the OIG report summary that includes a link to the full report. The findings are described below.

The OIG report uses data from a stratified random sample of 565 hospice general inpatient (GIP) stays in 2012, and was used in the earlier OIG report on GIP. The OIG used a contractor to examine the original hospice election statements for the hospice patients in their sample, which may have preceded the GIP stay. The findings are described below.

FINDINGS

Election Statements
The OIG reviewed election statements for key required features, which include information about the palliative rather than curative nature of hospice care and the waiver of coverage for certain services. In their analysis, they noted when election statements included inaccurate information and when the statement contained more information than was required.

Their findings identify vulnerabilities in hospice election statements and include:

- **Election statements missing required elements:** 35% of GIP stays in the sample used election statements that were missing required information or had other vulnerabilities. A breakdown of findings is below.

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<thead>
<tr>
<th>Deficiencies Present in Election Statement</th>
<th>% of GIP Stays</th>
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<tbody>
<tr>
<td>Did not specify Medicare</td>
<td>19%</td>
</tr>
<tr>
<td>Required waiver information was missing or stated inaccurately</td>
<td>12%</td>
</tr>
<tr>
<td>Required information about palliative care was missing</td>
<td>9%</td>
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<tr>
<td>Revocation or discharge information was inaccurate or unclear</td>
<td>4%</td>
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The OIG states that the categories are not mutually exclusive. Source: OIG analysis of election statements, 2015.
• **Waiver of certain Medicare services:** Some election statements did not mention that the beneficiary was waiving coverage of certain Medicare services, others inaccurately stated what Medicare services are waived.

• **Palliative rather than curative:** Some election statements did not state that hospice care was palliative rather than curative. The OIG reiterated that election statements, as indicated in the Medicare Benefit Policy Manual, state that the beneficiary or their representative must have a full understanding of this type of care.

The OIG also noted that in 4% of the stays, the election statement included “inaccurate or unclear information about revocation or discharge.” This information is not currently required in the election statement.

**Physician Narrative and Certification**

The OIG report stated that the physician narrative and certification was insufficient in 14% of the sample.

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<tr>
<th>Physician Narrative Issue</th>
<th>% of GIP Stays</th>
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<tr>
<td>Physician narrative was insufficient</td>
<td>14%</td>
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<tr>
<td>Physician did not include a narrative at all or only included the beneficiary’s diagnosis</td>
<td>10%</td>
</tr>
<tr>
<td>Physician must attest that the narrative is a result of the <strong>physician’s own examination of the patient and review of the medical record.</strong> The physician attestation was missing</td>
<td>5%</td>
</tr>
</tbody>
</table>

When reviewing the physician narrative and physician involvement, the OIG was looking for documentation that supports the judgment of prognosis, including changes in PPS scores, changes in BMI, weight loss, changes in activities of daily living, or other objective, quantifiable measures that would help to document the prognosis.

**OIG Recommendations to CMS**

1. **Develop and disseminate model text for election statements**
   The OIG recommends that this could be done through the Medicare Administrative Contractors. Having model text will help ensure that hospice election statements are clear and complete and that they contain accurate information about the Medicare hospice benefit.

   CMS concurred with this recommendation.

2. **Instruct surveyors to strengthen their review of election statements and certifications of terminal illness**
   CMS should instruct surveyors to—as a part of the survey and certification process—increase their attention to the requirements for election statements. Surveyors should determine
whether election statements contain all the required information and that this information is accurate.

CMS concurred with this recommendation.

3. Educate hospices about election statements and certifications of terminal illness
CMS should provide training to hospice providers about the requirements for election statements. The model text that we recommend be developed could serve as a basis for part of this training. The training should reiterate the requirements and ensure that hospices are reviewing and revising their election statements as appropriate. CMS should also provide training to hospices about the requirements for certifications of terminal illness.

CMS concurred with this recommendation.

4. Provide guidance to hospices regarding the effects on beneficiaries when they revoke their election and when they are discharged from hospice care
CMS should provide guidance to hospices that clarifies the effects of revocation and discharge on the beneficiary. This guidance should explicitly address (1) whether remaining days of the election period are lost and (2) when, after revocation or discharge, a new election period can begin for beneficiaries who are eligible. Hospices should have a clear understanding of the effects of revocation and discharge so that they can consistently implement policies and accurately inform beneficiaries.

CMS neither concurred nor nonconcurred with this recommendation and stated that it will monitor patient revocations and discharges and provide additional guidance to hospices, if needed.

For more resources on the CMS Medicare requirements for the hospice election statement, signed by the patient or representative, review the information in the Medicare Benefit Policy Manual (CMS Pub. 100-02), Ch. 9, §10, §20.2.1 and 40.1.3.1 (PDF) or specific guidance provided by the Medicare Administrative Contractor (MAC).

NHPCO offers members a detailed compliance guide and information on the hospice election process available in the Regulatory & Compliance section of NHPCO’s website.

Members with additional questions, please contact regulatory@nhpco.org.

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