

CMS Issues Flexibilities for Hospice Providers

April 2, 2020

1. 1135 Blanket Waivers for Hospices

Since the HHS Secretary Azar's declaration of the public health emergency on January 31, 2020, NHPCO has been working to ensure that the needs of hospice providers are taken into consideration as regulatory flexibilities are considered. When CMS issued the first set of 1135 blanket waivers on March 13, 2020, hospice providers were not listed. NHPCO met with CMS staff to review the concerns of hospice providers throughout the country and requested clarity in some of the most difficult regulatory requirements. At the same time, NHPCO worked with state leaders and providers to engage in the 1135 waiver process as part of the Hospice Action Network's multi-faceted advocacy plan that resulted in CMS granting several blanket Medicare waivers.

On March 30, 2020, the following 1135 blanket waivers were issued by CMS for hospice:

- Requirement that hospices are required to use **volunteers**, including the 5% of patient care hours requirement.
- Update of the **comprehensive assessment timeframe** has been extended from 15 to 21 days.
- Certain **non-core hospice services** do not need to be provided, including:
 - Physical therapy
 - Occupational therapy
 - Speech-language pathology
- Nurse is not required to conduct an **onsite supervisory visit of the nurse aide** every two weeks.

Blanket waivers are retroactive to March 1, 2020

Resources:

- CMS Fact Sheet for Hospice: <https://www.cms.gov/files/document/covid-hospices.pdf>
- Complete List of 1135 Waiver Provisions: <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

2. Interim Final Rule with Comment

On March 30, 2020, CMS also issued an Interim Final Rule with Comment in response to the COVID-19 Public Health Emergency. NHPCO has been advocating for these provisions for some time and legislation, the CARES Act, was passed and signed into law by President Trump allowing the face-to-face encounter to be completed through telehealth. There are two provisions that impact hospice providers: additional guidance for the telehealth hospice face-to-face encounter and the telehealth routine home care visits during this national emergency.

Posted in [Federal Register March 31, 2020](#)

Details for the hospice provisions include:

- Detailed guidance on providing the **hospice face-to-face encounter through telehealth**.
 - Use audio and video equipment permitting two-way, real-time interactive communication between the patient (from home, or any other site permissible for receiving services under the hospice benefit) and distant site hospice physician or hospice NP
- Details on the ability of the hospice to **provide routine home care through telehealth**. Details must be:
 - Included on the plan of care
 - Meet the requirements at § 418.56
 - Tied to the patient specific needs as identified in the comprehensive assessment
 - Plan of care must include a description of how the use of such technology will help to achieve the goals outlined on the plan of care

Effective date: March 1, 2020

3. CMS Announces Suspension of Most Medical Review During National Emergency

On March 30, 2020, CMS issued a set of Provider Burden Relief Frequently Asked Questions (FAQs) which announced the suspension of many, but not all, medical reviews. NHPCO has asked for this suspension since the beginning of the public health emergency to allow hospices to focus on caring for patients.

The suspension includes:

- Pre-payment medical reviews conducted by Medicare Administrative Contractors (MACs) under the Targeted Probe and Educate program.
- Post-payment reviews conducted by:
 - MACs
 - Supplemental Medical Review Contractor (SMRC) reviews
 - Recovery Audit Contractor (RAC)
- No **additional documentation requests will be issued** for the duration of the PHE for the COVID-19 pandemic.
- Targeted Probe and Educate reviews that are in process **will be suspended and claims will be released and paid**.
- Current post-payment MAC, SMRC, and RAC reviews **will be suspended and released from review**.

Keep up to date on changes in COVID-19 legislation, regulations, practice and guidance on the NHPCO COVID-19 page at www.nhpco.org/coronavirus.