

March 12, 2020

Seema Verma, Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, D.C. 20101

Dear Administrator Verma:

On behalf of the National Hospice and Palliative Care Organization (NHPCO), I thank you for your continued leadership on the COVID-19 Task Force and for working tirelessly to keep Americans safe and healthy. We are grateful for your collaboration with hospice and palliative care providers as we continue to respond to this coronavirus outbreak across our communities. Thank you for releasing the *Guidance for Infection Control and Prevention Concerning Coronavirus Disease 2019 (COVID-19)* by *Hospice Agencies* dated March 9, 2020. Since then, we have heard from many member providers throughout the country and appreciate the opportunity to put forth their recommendations that we believe will ensure the availability of uninterrupted community-based care to patients and families.

42 CFR 418 Hospice Care

Subpart B: Eligibility, Election and Duration of Benefits

§418.22(a)(4) Standard: Certification of terminal illness

Face-to-face encounter

Hospice patients are required to have a face-to-face visit with a hospice physician or nurse practitioner to determine continued eligibility for hospice benefits prior to recertification for the 3rd and each subsequent benefit period. CMS should issue immediate guidance permitting telephonic and telehealth-based encounters that are HIPAA compliant as an alternative to direct physician or nurse practitioner contact under the Medicare hospice face-to-face requirements during this period of emergency.

§418.24(a)(2) Standard: Election of hospice care

When a Medicare beneficiary elects hospice services, the hospice must complete an election notice with the beneficiary and file a notice of election (NOE) with Medicare within 5 calendar days. With the anticipated shortage of office staff to complete and file the Notice of Election, NHPCO requests additional flexibility in this timeframe.

§418.26 Discharge from hospice care.

Hospices are required to submit a Notice of Termination/Revocation (NOTR), within 5 calendar days after a hospice discharge/revocation, unless a final claim has already been submitted. With the anticipated shortage of office staff to file the Notice of Election, NHPCO requests additional flexibility in this timeframe.

The additional flexibility for the following Conditions of Participation (CoPs) will allow hospice providers to continue caring for patients in their location of care, including private homes and facilities, reducing risk of exposure to them, their caregivers and the public.

Subpart C: Conditions of Participation: Patient Care

§418.54(a) Standard: Initial Assessment

The federal hospice regulations require this assessment be completed within 48 hours from the effective date of the hospice election. Screening of the patient and family for COVID-19 contact and symptoms needs to be completed prior to patient/family contact. NHPCO is requesting additional flexibility on the timeframe for the initial assessment.

§418.54(b) Standard: Time Frame for Completion of the Comprehensive Assessment

The federal hospice regulation requires this assessment be completed within 5 calendar days from the effective date of the hospice election. Screening of the patient and family for contact and symptoms needs to be completed prior to patient/family contact. NHPCO is requesting additional flexibility on the timeframe for the comprehensive assessment.

§418.54(d) Standard: Update of the Comprehensive Assessment

The federal hospice regulations require that the comprehensive assessment be updated with any change in patient condition or at least every 15 days. Updates to the comprehensive assessment could be compromised if home visits are not allowed or are restricted by a quarantine or isolation situation. NHPCO is requesting additional flexibility on the timeframes for the updates to the comprehensive assessment, due to compromised access to patients in their location of care.

§418.56(c)(2) Standard: Plan of Care

The federal hospice regulations require that the plan of care specifies the scope and frequency of services necessary to meet the specific patient and family needs. If home visits are not allowed or are restricted by a quarantine or facility policy, NHPCO is requesting that CMS consider, where appropriate, allowing certain hospice discipline interventions to be performed via phone or other electronic devices to minimize risk of virus exposure.

§418.56(d) Standard: Review of the Plan of Care

The federal hospice regulations require that the plan of care be reviewed and updated with any change in patient condition, at least every 15 days. The ability to update the plan of care based on changes in the patient's condition could be compromised if home visits are not allowed or are restricted by a quarantine or isolation situation related to presence of COVID-19 in the home. NHPCO is requesting additional flexibility on the timeframes for the review and updating of the plan of care, due to compromised access to patients in their location of care.

§418.64 Condition of Participation: Core Services

The federal hospice regulations require nursing, social work, spiritual care counseling, bereavement counseling, and dietary counseling to be provided by hospice employees. It is anticipated that hospice staffing will be reduced related to COVID-19 surge and associated quarantine. NHPCO is requesting that contracting for core staff positions be allowed, as these positions are critical to ensure continued hospice care for patients and their families.

§418.76(h) Standard: Supervision of Hospice Aides. The federal hospice regulations require the nurse to supervise the hospice aide every 14 days at a minimum. It is anticipated that hospice staffing will be reduced related to COVID-19 surge and anticipated quarantine. NHPCO is requesting that CMS permit telephonic supervision of hospice aides to meet the nurse aide supervision requirements where appropriate due to staffing shortages, and to minimize the risk of virus exposure during this COVID-19 outbreak.

§418.78(e) Standard: Level of Activity

The federal hospice regulations require the use of volunteers for day-to-day administrative and/or direct patient care services in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff. It is anticipated that hospice volunteer availability and use will be reduced related to COVID-19 surge and anticipated quarantine. NHPCO requests additional flexibility for the 5 percent requirement for volunteers.

Subpart F: Coverage Requirements

§418.204 Special coverage requirements

During the COVID-19 outbreak, the requirements for continuous home care and the description of periods of crisis must change, as hospices may need additional flexibility to continue to care for patients in their homes. If the patient is symptomatic of having COVID-19 infection, the hospice should work to keep the patient at home when possible, rather than sending them to a facility for inpatient care. In addition, patients may need to remain at home with more intensive hospice support for a period of in-home respite care to mitigate exposure risk for others in the community.

NHPCO requests the following:

1. CMS guidance that, for the period of the COVID-19 outbreak, in addition to acute symptom management for the patient, caregiver illness could be a reason for care to be provided at home for the patient on a continuous basis.
2. Remove the staffing ratio requirement to allow the hospice to determine the ratio of nursing and aide services necessary to meet the individual needs of patients and families on a case by case basis.
3. Allow contracting for nursing staff to provide continuous home care.
4. Reduce the minimum hour requirement for continuous home care from a minimum of 8 hours to a minimum of 4 hours during this COVID-19 outbreak.

Supplies & Testing

Hospice and palliative care providers are still having trouble accessing personal protective equipment (PPE) due to the worldwide shortage related to decreases in exports from select countries and increases in demand. This is an enhanced issue for our provider community because so much of our care is provided in a patient's home.

Recommendation: CMS should provide guidance regarding associated procedures and processes that hospice providers can follow to gain access to the anticipated increase in PPE that will become available with increased funding. Provider PPE needs include the following: isolation gowns, masks (including n95 respirators and surgical masks), face shields and goggles, and medical grade gloves.

Recommendation: CMS should provide guidance regarding the exact steps and procedures for how and when screening and testing should be completed. We need additional information on how to obtain screening kits and when to coordinate with a local health department. Additionally, providers need more information on how and who pays for the COVID-19 testing kits.

We look forward to discussing these recommendations with you and your staff. Feel free to have your staff contact Judi Lund Person, Vice President of Regulatory and Compliance at jlundperson@nhpco.org or Annie Acs, Director of Health Policy and Innovation at aacs@nhpco.org if you have questions or to arrange a meeting.

Sincerely,



Edo Banach, President & CEO
NHPCO