

## **Medicare Hospice Election Statement and Patient Notification of Hospice Non-Covered Items, Services and Drugs (Hospice Election Statement Addendum)**

Compliance for Hospice Providers  
**Revised February 2022**

### DISCLAIMER

This Compliance Guidance has been gathered and interpreted by NHPCO from various resources and is provided for informational purposes. This should not be viewed as official policy of CMS or the Medicare Administrative Contractors (MACs). It is always the provider's responsibility to determine and comply with applicable CMS, MAC, and other payer requirements.

## **REGULATORY REQUIREMENTS FOR THE HOSPICE ELECTION STATEMENT**

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The hospice election statement is a critical element of the admission process. Missing information on the election statement or an election statement that does not reflect current or new regulatory language could result in a technical denial and non-payment from Medicare.

The regulatory requirements for the election statement are found in [§ 418.24 Election of hospice care](#). CMS has developed a [Model Election Statement Form](#). NHPCO, the Medicare Administrative Contractors and CMS all strongly encourage providers to add the agency's logo and use this model election statement. If it is used, there is little chance that an element of the election statement would be missed or that a technical denial would be issued.

The purpose of the election statement is to inform the beneficiary of the effects of electing their Medicare Hospice Benefit.

The following items should be in the hospice election statement:

1. Identification of the particular hospice and of the attending physician, if there is one, that will provide care to the individual. The individual or representative must acknowledge that the identified attending physician was his or her choice. (The individual may choose not to identify an attending physician.)
2. The individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness and related conditions.
3. Acknowledgement that the individual has been provided information on the hospice's coverage responsibility and that certain Medicare services, as set forth in [paragraph \(f\)](#) of this section, are waived by the election. For Hospice elections beginning on or after October 1, 2020, this would include providing the individual with information indicating that services unrelated to the terminal illness and

related conditions are exceptional and unusual and hospice should be providing virtually all care needed by the individual who has elected hospice.

4. 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 date of the election statement.
5. For Hospice elections beginning on or after October 1, 2020, the Hospice must provide information on individual cost-sharing for hospice services.
6. For Hospice elections beginning on or after October 1, 2020, the Hospice must provide notification of the individual's (or representative's) right to receive an election statement addendum, as set forth in [paragraph \(c\)](#) of this section, if there are conditions, items, services, and drugs the hospice has determined to be unrelated to the individual's terminal illness and related conditions and would not be covered by the hospice.
7. For Hospice elections beginning on or after October 1, 2020, the Hospice must provide information on the Beneficiary and Family Centered Care Quality Improvement Organization (BFCC-QIO), including the right to immediate advocacy and BFCC-QIO contact information.
8. The signature of the individual or representative.

NHPCO Resource: [Election Statement Checklist](#)

## REGULATORY REQUIREMENTS FOR THE PATIENT NOTIFICATION OF HOSPICE NON-COVERED ITEMS, SERVICES AND DRUGS (HOSPICE ELECTION STATEMENT ADDENDUM)

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The hospice election statement addendum was added as a regulatory requirement to accompany the hospice election statement on October 1, 2020. The election statement addendum is a form that must be described to all patients and their representatives during the admission process. A patient or their representative may request the addendum at any point during hospice care. Establishing a process for the discussion of the addendum with patients and families and tracking requests and the timeframes for issuing the addendum are important processes for the hospice.

The regulatory requirements for the election statement addendum are found in [§ 418.24 Election of hospice care](#). CMS has developed and released a [model hospice election statement addendum](#), revised in July 2021. NHPCO, the Medicare Administrative Contractors and CMS all strongly encourage providers to add the agency's logo and use this model election statement addendum, to ensure that there are no missing elements on the addendum.

The purpose of the Election Statement Addendum is to inform the beneficiary (or representative) upon request, of any items, services, or drugs the hospice provider will **not** be providing because they have been determined as unrelated to the terminal illness and related conditions. However, these items, services, and drugs may be covered under other Medicare benefits if coverage and eligibility requirements are met.<sup>1</sup>

The following items should be in the hospice election statement addendum:

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<sup>1</sup> Centers for Medicare & Medicaid Services. (2020, Aug 4). Medicare Program; FY 2021 Hospice Wage Index and Payment Rate Update. Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2020-08-04/pdf/2020-16991.pdf>

1. For hospice elections beginning on or after October 1, 2020, in the event that the hospice determines there are conditions, items, services, or drugs that are unrelated to the individual's terminal illness and related conditions, the individual (or representative), non-hospice providers furnishing such items, services, or drugs, or Medicare contractors may request the election statement addendum.
2. The election statement addendum can be requested by the patient/representative but is not required to be given to each Medicare patient/representative.
3. The hospice's responsibility is to determine if there are conditions, items, services, or drugs that are unrelated to the individual's terminal illness and related conditions and to prepare the Election Statement Addendum, as outlined below, if requested.
4. If the election statement addendum is requested at the time of initial hospice election (that is, at the time of admission to hospice), the hospice must provide this information, in writing, to the individual (or representative) within 5 days from the date of the election. The date of the hospice election is day 0.
5. If this election statement addendum is requested during the course of hospice care (that is, after the hospice election date), the hospice must provide this information, in writing, within 3 days of the request to the patient/representative, non-hospice provider, or Medicare contractor.
6. If there are any changes to the content on the Election Statement Addendum during hospice care, the hospice must update the Election Statement Addendum and provide these updates, in writing, to the patient/representative.
7. Non-hospice providers furnishing such items, services, or drugs, or Medicare contractors may also request a copy of the Election Statement Addendum for communication and care planning purposes. If a non-hospice provider requests an addendum, no signature is required, although the hospice should document the date the addendum was requested, who made the request and the date the addendum was furnished.

#### Content of hospice election statement addendum.

1. The addendum **must** be titled "Patient Notification of Hospice Non-Covered Items, Services, and Drugs."
2. Name of the hospice.
3. Individual's name and hospice medical record identifier.
4. Identification of the individual's terminal illness and related conditions.
5. A list of the individual's conditions present on hospice admission (or upon plan of care update) and the associated items, services, and drugs not covered by the hospice because they have been determined by the hospice to be unrelated to the terminal illness and related conditions.
6. A written clinical explanation, in language the individual (or representative) can understand, as to why the identified conditions, items, services, and drugs are considered unrelated to the individual's terminal illness and related conditions and not needed for pain or symptom management. This clinical explanation must be accompanied by a general statement that the decision as to whether or not conditions, items, services, and drugs are related is made for each patient and that the individual should share this clinical explanation with other health care providers from which they seek items, services, or drugs unrelated to their terminal illness and related conditions.
7. References to any relevant clinical practice, policy, or coverage guidelines.
8. Information on the following:
  - (i) Purpose of Addendum. The purpose of the addendum is to notify the individual (or representative), in writing, of those conditions, items, services, and drugs the hospice will not be

covering because the hospice has determined they are unrelated to the individual's terminal illness and related conditions.

- (ii) Right to Immediate Advocacy. The addendum must include language that immediate advocacy is available through the Medicare Beneficiary and Family Centered Care-Quality Improvement Organization (BFCC-QIO) if the individual (or representative) disagrees with the hospice's determination.
9. Name and signature of the individual (or representative) and date signed, along with a statement that signing this addendum (or its updates) is only acknowledgement of receipt of the addendum (or its updates) and not necessarily the individual's (or representative's) agreement with the hospice's determinations.

The Election Statement Addendum statement is only issued upon request of the patient/representative either at the time of admission or during the course of hospice care when items, services, or drugs are determined to be unrelated to the terminal illness and related conditions.<sup>1</sup>

- **Request at time of hospice election:** The hospice provider would issue the addendum within 5 days of the effective date of the election.
  - For example, if the beneficiary elects hospice on June 15<sup>th</sup> with an effective date of June 15<sup>th</sup> (same day), the addendum, if requested, would be provided within 5 days of June 15<sup>th</sup> which would be June 20<sup>th</sup>.
  - For example, if the beneficiary elects hospice on May 1st with an effective date of May 7th, the addendum, if requested, would be provided within 5 days of May 7<sup>th</sup> which would be May 12<sup>th</sup>.
- **Request within the 5-day timeframe after the effective date:** The hospice provider would issue the addendum within 3 days from the date of the request to furnish the addendum.
- **Request during course of care including transfer of hospice care:** The hospice provider would issue the addendum 3 days from the date of the request.
- **Request during transfer of hospice care:** If the beneficiary/representative) requests the addendum from the receiving hospice provider, the receiving hospice would issue the addendum or 3 days from the date of request.

	Timing of Issuance	Reason to Issue
<b>Hospice Election Statement Addendum</b>	<ul style="list-style-type: none"> <li>• Request at time of hospice election - the hospice provider would issue the addendum within 5 days of the effective date of the election. Request within the 5-day timeframe after the effective date - the hospice provider would issue the addendum within 3 days from the date of the request to furnish the addendum.</li> <li>• Request during course of care including transfer of hospice care - the hospice provider would issue the addendum 3 days from the date of the request. Request during transfer of hospice care – if the beneficiary/representative) requests the addendum from the receiving hospice provider, they hospice would issue the addendum 3 days from the date of request.</li> </ul>	<p>Upon beneficiary request, if the hospice has determined that certain items, services, and drugs are unrelated to the terminal illness and related conditions and not covered by hospice.</p> <p><b>These items, services, and drugs may be covered under other Medicare benefits if coverage and eligibility requirements are met.</b></p>

## Election Statement and Addendum Requirement

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- *Effective October 1, 2020, the modified election statement and addendum became a requirement for all Medicare admissions on or after October 1, 2020.*
- *When requested by the patient/authorized representative, hospices must provide the addendum:*
  - *Upon admission within 5 days of the effective date of the election*
  - *After the election of hospice, within 3 days hours of the request*
- *The signed addendum will be a part of the patient’s medical record and will be a condition of payment.*
- Missing components of the election statement and addendum statement will result in a technical denial of the claim if it is reviewed by a Medicare Administrative Auditor or other Medicare contractor.

Source: [eCFR: 42 CFR 418.24 -- Election of hospice care.](#)

CMS [Model Example of “Patient Notification of Hospice Non-Covered Items, Services, and Drugs](#)

## Filing the Notice of Election (NOE)

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- 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.
- 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.

## Duration of the Election

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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.
  - 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

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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

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- 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

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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 the hospice. The hospice bills Medicaid for the room and board and pays the facility an agreed upon amount under contract with the hospice, **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 Medicare Beneficiaries Enrolled in a Medicare Advantage Plan

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- A Medicare beneficiary enrolled in a Medicare Advantage (MA) plan 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 MA plan enrollee 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](#)).
- **Hospice Benefit Component into the Medicare Advantage Value-Based Insurance Design (MA-VBID):** Beginning in CY 2021, CMS implemented the Hospice Benefit Component into the Medicare Advantage Value-Based Insurance Design (MA-VBID) model. When a patient enrolled in an MA plan participating in the Hospice Benefit Component of the VBID Model (or the “Model”) elects hospice, the plan generally covers all of their Medicare benefits, including hospice care, under contract. Each participating MA plan must include all the services covered by the Part A hospice benefit under Fee-For-Service Medicare. This Hospice Benefit Component of VBID, starting in 2021, is a five-year model to test the inclusion of hospice services into Medicare Advantage. The [CMS Innovations Center](#) has more information on VBID and the Hospice Benefit Component.

## Administrative Considerations

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- Hospices obtain the Hospice Election Statement from the patient/ representative and submits the Notice of Election (NOE) to the Medicare contractor via DDE, the EMR vendor or a clearinghouse. The hospice election information is transmitted 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

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- **FY 2022 Hospice Wage Index Final Rule:** The [FY2022 Hospice Wage Index Final Rule](#) was effective October 1, 2021. Updates include clarifying regulatory text changes for Hospice Election Statement Addendum.
- **FY2021 Hospice Wage Index Final Rule:** The [FY2021 Hospice Wage Index Final Rule](#) is effective October 1, 2020. Updates include modifications to the election statement and an addendum.
- **FY2015 Hospice Wage Index Final Rule:** The [FY2015 Hospice Wage Index Final Rule](#) was effective on October 1, 2014. Updates include the requirement to file both the electronic notice of election (NOE) and the notice of termination/revocation (NOTR) on behalf of beneficiaries within 5 calendar days after the effective date of election or of discharge/revocation, respectively.
- **CMS. Transmittal, [Change Request 8727](#)** amended the content of the Notice of Election (NOE), effective August 4, 2014. The update clarified the effective date of the election, continuance of an election, election of hospice care after a provider is Medicare-certified,
- CMS. Pub. 100-04, [Medicare Claims Processing Manual, chapter 11](#). Retrieved from Medicare Internet Only Manuals.
- CMS. [Coverage of Hospice Services Under Hospital Insurance, chapter 9, section 20.2](#). Retrieved from CMS Internet Only Manuals.
- CMS. [42 CFR 418, Subpart B— Eligibility, Election and Duration of Benefits](#). Retrieved from Electronic Code of Federal Regulations.
- CMS. Transmittal, [Change Request 7337](#). Retrieved from CMS Transmittals.