NAHC Summary of Proposed FY2021 Hospice Payment Rule, Election Statement and Addendum Requirements

Hi, everyone. Following is a summary prepared by NAHC staff of the FY2021 proposed hospice rule. We will be announcing plans for a webinar on key issues included in the rule in the near future.

CMS Issues Proposed FY2021 Hospice Wage Index and Payment Rate Update – Election Statement and Addendum Guidance Part of Proposed Rule

On Friday, April 10, 2020, the Centers for Medicare & Medicaid Services (CMS) issues its proposed fiscal year (FY) 2021 payment rule to update the wage index, payment rates (with a 2.6 percentage update), and cap amount. The rule also proposes changes to the hospice wage index by adopting the most recent Office of Management and Budget statistical area delineations, with a 5 percent cap on wage index decreased. The rule also proposed to sunset the Service Intensity Add-on (SIA) budget neutrality factor. Finally, the rule summarizes changes to the hospice election statement proposed during the FY2020 rule cycle to become effective October 1, 2020, as well as a model election statement and sample addendum for use in delineating diagnoses and treatments that are unrelated to the hospice terminal diagnosis and related conditions. The overall impact of the rule is an estimated $580 million in increased hospice payments. For comments to be considered, they must be received no later than 5 p.m. on June 9. The proposed rule is scheduled for publication in the *Federal Register* on April 15.

Hospice Wage Index Changes

The proposed rule discusses notification issued in September 2018 by the Office of Management and Budget (OMB) that establishes revisions to the delineations of Metropolitan Statistical Areas (MSAs), Micropolitan Statistical Areas, and Combined Statistical Areas, and guidance on uses of the delineations in these areas. While CMS believes that hospices should be subject to the most current OMB delineations, the agency acknowledges that the modifications represent a number of significant changes. These include changes in status from urban to micropolitan, urban to rural, rural to urban, shifts of counties from one urban CBSA to another, and other changes. For this reason, it is important for hospice providers to examine the anticipated shifts as outlined in the rule and in the wage index tables. CMS is proposing to implement the new delineations. Of further potential import, a subsequent OMB bulletin was issues on March 6, 2020, too late for inclusion in the proposed rule. CMS plans to analyze the bulletin and incorporate relevant further changes for the final FY2021 rule. To mitigate the impact of the changes, CMS is proposing a transition period to the new delineations to address any short-term instability that may arise as the result of implementing the new delineations. For FY2021, as a transition, CMS will apply a 5 percent cap on any decrease in a geographic area's wage index value from the wage index value from FY2020. No cap will be applied in FY2022. CMS invites comments on this proposed change.

Wage index files, including a crosswalk between the FY2021 wage index values using current OMB delineations, as compared with the values using the new delineations. These files are available HERE (see link at the middle of the page).

Wage Index and Payment Update

FY2021 Hospice Wage Index: The FY2021 rule proposed to use the FY2021 pre-floor, pre-reclassified wage index, with a 5 percent cap on wage index decreases (as referenced above). The wage index value is applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving routine home care (RHC) or continuous home care (CHC). The wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving general inpatient care (GIP) or inpatient respite care (IRC).

Proposed FY2021 Payment Update Percentage: The hospice payment update is based on the inpatient hospital market basket percentage increase, which is currently estimated at 3.0 percent, less an Affordable Care Act-mandated productivity adjustment, which is currently estimated at 0.4 percentage point. This results in an estimated 2.6 percent update to the FY2020 payment rates for FY2021. (**NOTE:** The hospital market basket and productivity adjustment are subject to change; final rates will be issued as part of the final rule, typically in late July.) Based on these estimates, following are the proposed FY2021 base payment rates for various levels of care:

Description	FY2020 Payment Rate	Wage Index Standardization Factor	Proposed FY2021 Hospice Payment Update	Proposed FY2021 Payment Rates
Routine Home Care (days 1-60)	$194.50	X 0.9989	X 1.026	$199.34
Routine Home Care (days 61+)	$153.72	X 0.9990	X 1.026	$157.56
Continuous Home Care (24 hours)	$1,395.63	X 0.9991	X 1.026	$1,430.63 ($59.61 per hour)
Inpatient Respite Care	$450.10	X 0.9993	X 1.026	$461.48
General Inpatient Care	$1,021.25	X 0.9988	X 1.026	$1,046.55

Please note: Payment rates for hospice providers NOT complying with the hospice quality reporting requirements will be 2 percentage points lower than the values referenced in the above table.

Service-Intensity Adjustment (SIA) Issues: Hospice providers are reminded that the hourly rate for continuous home care (estimated at $59.61 for FY2021) is utilized for the service-intensity adjustment (SIA) payments, which are provided to hospices for up to four hours per day in the final seven days of life when RNs and social workers provide care to patients on routine home care (RHC).

When the SIA was instituted, CMS included a budget neutrality factor designed to reduce the overall RHC rate to ensure that SIA payments are budget neutral. CMS has analyzed the SIA budget neutrality factors calculated for FYs 2016 through 2020 and determined that the utilization of the SIA from one year to the next has remained relatively constant. Based on this general stability, CMS is proposing, as part of the FY2021 rule, to eliminate the SIA budget neutrality factor to simplify the payment update calculation. CMS is seeking input on this proposal as part of the rule.

Hospice Aggregate Cap: CMS is proposing an Aggregate Cap value for FY2021 of $30,743.86 (the FY2020 value of $29,964.78 multiplied by 2.6 percent).

Election Statement Modifications and Election Statement Addendum

In the FY 2020Hospice final rule CMS finalized modifications to the hospice election statement content and set forth requirements for a hospice election statement addendum. CMS is not proposing any changes to the policies finalized in the FY 2020 Hospice final rule regarding the election statement content modifications or the requirements for the election statement. The election statement modifications and the election statement addendum requirements will be effective for hospice elections beginning on and after October 1, 2020 and the previously finalized policy that the signed addendum (and any signed updates) would be a new condition for payment will also be effective at that time.

CMS indicated it would provide further guidance and a model modified election statement and election statement addendum. These model documents can be found here. Hospices are free to develop and design their own modified election statement and the addendum. CMS has provided the model documents as an example of one way the election statement and addendum can be designed. The format of the addendum must be usable for the patient. CMS expects that this would be in a hard copy format that the individual can keep for his/her own records, similar to how hospices are required by the hospice conditions of participation (CoPs) at §418.52(a)(3) to provide the individual a copy of the notice of patient rights and responsibilities.

CMS is soliciting comments on both model examples to see if they are helpful in educating hospices in how to meet the requirements.

Hospices and other stakeholders had many concerns about the election statement modifications and the addendum including such issues as the best way to furnish this information to patients and their representatives in the most clear and unobtrusive way; mechanisms to make necessary changes or adjustments to the addendum content; obtaining necessary signature(s) on the addendum; expected documentation in the hospice's medical record to determine whether the addendum was requested, when it was requested, whether it was present, and whether the condition for payment requirement has been met; expectations as to the auditing process by the Medicare Administrative Contractors (MACs) when an Additional Documentation Request (ADR) is made; and the provision of MAC and BFCC-QIO education. In this proposed rule, CMS addresses some of these concerns.

CMS reiterates that hospices are already tasked with providing detailed information on hospice services and limitations to those services to the patient upon election of the benefit as they are required during the initial assessment visit, in advance of furnishing care, to provide the patient or representative with verbal (meaning spoken) and written notice of the patient's rights and responsibilities in a language and manner that the patient understands. They are also already required to inform the beneficiary of the services covered under the Medicare hospice benefit, as well as the scope of such services. CMS believes that the addendum further complements these requirements by ensuring that the hospice informs them of any items, services, or drugs which the terminally ill individual would have to seek outside of the benefit. Also, hospices are already required to make updates to the plan of care at least every 15 days, or more often as the patient's condition warrants. Therefore, CMS believes hospices already have systems in place to address and document the changing needs of the patient via the hospice plan of care, and CMS does not expect there to be frequent changes to the addendum.

One of the main concerns of hospices was obtaining the signature of the patient (or legal representative) on the election statement addendum as well as the date of the signature, in addition to obtaining this same individual's signature on the election statement. The hospice election statement has

always required the signature of the patient (or legal representative). CMS expects that the signature on the addendum would be similar to how each hospice obtains the individual's signature on the election statement itself. That is, if the individual electronically signs the election statement, there is nothing prohibiting the hospice from having the addendum electronically signed. CMS noted that it is at the MAC's discretion as to how they address patient/representative electronic signatures in their review of medical records, so hospices should confirm with their respective Medicare contractors as to the use of electronic signatures for beneficiary (or legal representative) signatures. CMS also indicated in this proposed rule that it will provide education to Medicare contractors to help ensure that the finalized policies are fully understood.

Other requirements and expectations for the modified election statement/addendum are as follows:

- Since the addendum is part of the election statement it is also a required part of the patient's record, if the addendum is required.
- Hospices can develop a way to document whether or not the addendum was requested at the time of hospice election (or at any time throughout the course of hospice care). This could be done in checklist format or as anecdotal notes.
- In the case of ADR, the hospice should submit a signed addendum, if one was requested, or clear documentation that the availability of the addendum was discussed. Note: Policy finalized in the FY2020 hospice final rule allows hospices to provide the addendum voluntarily to all patients.
- If the beneficiary (or legal representative) does not request the addendum, the hospice should document, in some fashion, that the addendum was discussed with the patient (or legal representative) at the time of admission, similar to how other patient and family discussions are documented in the hospice's clinical record.

Hospice Quality Reporting Program

There are no proposals or updates in this proposed rule to the Hospice Quality Reporting Program.

Webinar

The National Association for Home Care & Hospice (NAHC) will be hosting a webinar in the coming days to review the changes incorporated in the proposed rule and is soliciting comments on the proposed rule from hospice stakeholders for inclusion as part of NAHC's comments. If you have comments you would like to make on specific parts of the rule, please email Theresa Forster (tmf@nahc.org) or Katie Wehri (Katie@nahc.org). We welcome your input.