Regulatory Primer- Part I

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National Hospice and Palliative Care Organization

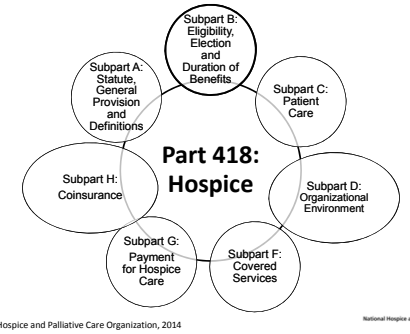
Session objectives

1. Identify location of Subpart B federal hospice regulations
2. Interpret the requirements for all federal regulatory requirements for Subpart B
3. Demonstrate compliance with the federal requirements for all regulatory requirements for Subpart B

Important Reminder!

- **Today's material is specific to the content of the Medicare Hospice Benefit**
- **Each state has its own licensing rules — you need to review and follow the more stringent of the rules**

Hospice Regulations-Subparts



Regulations as Management Tools

- Answer questions about how something should be done
- Address questions about why something must be done in a particular way
- Assist in the orientation of new employees and volunteers
- Guide the development and implementation of quality assessment and performance improvement programs

Regulations as Management Tools (Con't)

- Provide tools/strategies with which organizations can assess themselves
- Assist with the development of organizational structure and operations
- Provide a solid foundation for strategic development and future direction

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Why are Regulations So Important?

- Set a standard for care
- Ensure consistency in broad care concepts
- Ensure quality to constituents
  - Patients/families
  - Colleagues in health care, internal/external payers
- Required to receive Medicare revenue to fund operations

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Regulations

Requirements published which provide details for compliance with the law

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Hospice Regulations

Where are the federal regulations?

Title 42 – Public Health

- Chapter IV- Centers for Medicare and Medicaid Services
- Department of Health and Human Services
- Part 418 – Hospice Care

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Subpart B—Eligibility, Election and Duration of Benefits

- § 418.20 Eligibility requirements.
- § 418.21 Duration of hospice care coverage--Election periods.
- § 418.22 Certification of terminal illness.
- § 418.24 Election of hospice care.
- § 418.25 Admission to hospice care.
- § 418.26 Discharge from hospice care.
- § 418.28 Revoking the election of hospice care.
- § 418.30 Change of the designated hospice.

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§ 418.20 Eligibility requirements

An individual must be:

(a) Entitled to Part A of Medicare and

(b) Certified as being terminally ill in accordance with §418.22

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§418.21 Election periods

(1) Initial 90-day period

(2) Subsequent 90-day period followed by

(3) Unlimited number of 60-day periods

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§418.22 Certification of terminal illness (CTI)

The CTI has several components

No valid certification period without applicable components

	1st 90-day period	2nd 90-day period	1st and subsequent 60-day periods
Verbal certification	☑ If written certification is not obtained within 2 days of the start of care date ☑ No physician signature required	☑ If written certification is not obtained within 2 days of the start of care date ☑ No physician signature required	☑ If written certification is not obtained within 2 days of the start of care date ☑ No physician signature required
Written certification form	☑ Signed by attending physician and hospice medical director/ hospice physician ☑ Physician signature and date required	☑ Signed by hospice medical director/ hospice physician ☑ Physician signature and date required	☑ Signed by hospice medical director/ hospice physician ☑ Physician signature and date required
Face-to-face encounter attestation statement			☑ Face-to-face encounter attestation statement ☑ Physician/ NP signature and date required below attestation
Physician narrative statement and attestation statement	☑ Narrative statement ☑ Attestation statement ☑ Physician signature required below attestation	☑ Narrative statement ☑ Attestation statement ☑ Physician signature required below attestation	☑ Narrative statement ☑ Attestation statement ☑ Physician signature required below attestation

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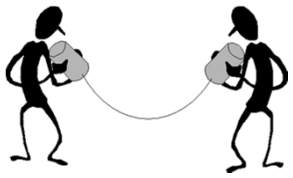
Verbal Certification



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Verbal certification of terminal illness

- If no written certification within 2 calendar days, must obtain oral certification within 2 calendar days after the start of care.
- Suggested content of the verbal certification to include:
  - Statement of terminal illness - suggested text below:
    I certify that (***Beneficiary's Name***) is terminally ill with a life expectancy of six months or less if the terminal illness runs its normal course.
  - Certification period dates - suggest that dates appear as "from and through" dates; suggested text below:
  - Certification period dates: ____/____/____ to ____/____/____

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The verbal certification of terminal illness form

- Staff signature
  - The hospice staff member documenting the verbal certification from the physician should print, sign, and date their name under the verbal certification statement
  - A physician signature is not required for the verbal certification
- The verbal certification can be documented separately or on the written certification form

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Written Certification

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Written certification of terminal illness form

- **First 90-day certification period**
  - The patient's attending physician (if any) **and** the hospice medical director/ hospice physician are required to certify the patient's terminal illness.
  - Each physician should certify the patient's terminal illness on a separate certification form.
  - If the hospice physician is also the patient's chosen attending physician, then the hospice physician signs the certification in each role.
  - No billing until written certification obtained from both physicians
- May be completed up to 15 days before the start of the next benefit period

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The written certification of terminal illness form

- **Second 90-day certification period**
  - This is a recertification.
  - Only the hospice medical director/ hospice physician is required to certify the patient's terminal illness.
  - If the hospice physician is also the patient's chosen attending physician, then the hospice physician signs the certification in each role.
  - No billing until written certification obtained

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Written certification of terminal illness form

The certification of terminal illness **must include:**

- **Statement of terminal illness** - suggested text below:

  I certify that (***Beneficiary's Name***) is terminally ill with a life expectancy of six months or less if the terminal illness runs its normal course.
- **Certification period dates** - suggest that dates appear as **"from and through"** dates; suggested text below:

  Certification period dates: ____/____/____ to ____/____/____
- Optional additions on certification form
  - Effective date of certification: ____/____/____
  - Terminal diagnosis

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Brief physician narrative statement & attestation

- **The narrative statement must be composed by the certifying physician per federal hospice regulations.** (§418.22 Certification of Terminal Illness, 2010)
- NHPCO recommends that the hospice medical director/ hospice physician compose the narrative statement versus the attending physician for the first 90-day certification period.
  - hospice medical director/hospice physician is more knowledgeable about the wording requirements in the narrative statement.
- Physician required to review the individual's clinical circumstances and synthesize the medical information to provide written clinical justification for admission to hospice services in the form of a physician narrative.

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Brief physician narrative statement and attestation

- Content of the physician narrative should include reference to applicable LCDs, prognostic indicators, and/or symptom management scale outcomes.
- The narrative statement can be part of the certification of terminal illness form or it can be an addendum to the certification form.
  - If the narrative statement is an addendum, indicate that it is an addendum on the certification of terminal illness form.

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Brief physician narrative statement and attestation

- An attestation statement must be included with the physician narrative statement. NHPCO suggested text follows:

  Physician narrative attestation: I confirm that I composed this narrative statement and that it is based on my review of the patient's medical record and/or examination of the patient.

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Brief physician narrative statement and attestation

- **Physician signature**
  - The certifying physician's printed name, signature, and date should appear below the attestation statement.
  - If the physician forgets to date the certification, a notarized statement or some other acceptable documentation can be obtained to verify when the certification was obtained

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First and subsequent 60-day certification periods

- Same certification components **plus** face-to-face encounter
- Face-to-face encounter timing:
  - Up to 30 days before the start of the benefit period
  - On the first day of the new benefit period is allowable
- Encounter may be completed by a hospice physician or nurse practitioner
  - Physicians may be direct hires, contracted, or volunteers
  - NP's must be employed by the hospice or larger organization if hospice a component of system

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First and subsequent 60-day certification periods

- Documentation of face-to-face encounter is the attestation statement
  - Suggested attestation text when the face-to-face encounter visit is completed by the certifying physician:

I confirm that I had a face-to-face encounter with (*Beneficiary's Name*) on (___/___/___date) and that the clinical findings of that encounter have been used in determining continued eligibility for hospice care.

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First and subsequent 60-day certification periods

- Suggested attestation text when the face-to-face encounter visit is completed by the non-certifying physician or NP :

I confirm that I had a face-to-face encounter with (*Beneficiary's Name*) on (___/___/___date) and that the clinical findings of that encounter have been provided to the certifying physician for use in determining continued eligibility for hospice care.

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First and subsequent 60-day certification periods

- Signature on the face-to-face encounter attestation statement
  - The date of the face-to-face encounter visit and the date the physician/ NP signs the face-to-face encounter attestation statement; do not need to be the same date.
  - The physician or NP's printed name, signature, and date should appear below the face-to-face encounter attestation statement.

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Missed/ late face-to-face encounter

- If face-to-face encounter is not completed timely, the patient ceases to be eligible for the Medicare Hospice Benefit.
- The patient must be "discharged from" and "readmitted to" the Medicare Hospice Benefit.
- The hospice provider continue to provider care to the patient at their own cost during uncovered period.
- No billing until new face-to-face encounter is completed.
- A face-to-face encounter is attached to a benefit period.

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Timeframe exceptional circumstances

- Applicable to the 3rd or subsequent benefit periods
- New admits
- Exceptional circumstances may prevent a face-to-face encounter prior to the start of the benefit period
- Examples:
  - patient is an emergency weekend admission, it may be impossible for a hospice physician or NP to see the patient until the following Monday.
  - CMS data systems are unavailable, the hospice may be unaware that the patient is in the third benefit period.

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Timeframe exceptional circumstances

- Circumstances must be documented
- Face-to-face encounter which occurs within 2 days after admission will be considered to be timely.
- In documented cases where patient dies within 2 days of admission without a face-to-face encounter, a face-to-face encounter can be deemed as complete.

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Election of Hospice

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§418.24 Election of hospice care

- Patient waives all rights to traditional Medicare payments under part A
- No verbal elections allowable
  - Election is a written signature by patient or representative
- Election form can designate a future effective date
- Effective date of the election is the first day of billing per CMS

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Election form content

- Name of hospice provider
- Patient/representative's acknowledgment that they have been given a full understanding of hospice care, **particularly the palliative rather than curative nature of treatment**
  - The bold text is the update to this requirement outlined in CR 7337 issued on March 2, 2011 with an implementation date of March 23, 2011.
- Patient/representative's acknowledgment that they understand certain Medicare services are waived by the election.
- The effective date of the election.
  - A future effective date may be designated by the patient/representative, but it may not be backdated.
- The signature of the individual or representative.

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Admission to Hospice

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§418.25 Admission to hospice care

- Patient admitted only upon recommendation of medical director in consultation with, or with input from, patient's attending physician.
- In reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information:

  (1) Diagnosis of the terminal condition of the patient.

  (2) Other health conditions, whether related or unrelated to the terminal condition.

  (3) Current clinically relevant information supporting all diagnoses.

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Discharge from Hospice

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§418.26 – Discharge from Hospice Care

- **Reasons for hospice discharge:**
  - Patient moves out of the hospice's service area or transfers to another hospice; patient enters non-contract facility (CR 7677)
  - The hospice determines that the patient is no longer terminally ill; or
  - The hospice determines that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative

❖ **Discharge is a hospice decision**

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418.26 – Discharge from Hospice Care

- **When discharging patient for these reasons:**
  - Hospice must obtain a written physician's discharge order from the hospice physician
  - Attending physician should be consulted before discharge and his or her review and decision included in the discharge note
  - Discharge planning completed by hospice provider

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Examples of patient leaving service area

- When a hospice patient moves to another part of the country
- When a hospice patient leaves the area for a vacation (optional… not required)
- When a hospice patient is admitted to a hospital or SNF that does not have a contractual arrangement with the hospice

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Condition code – leaving service area

- Hospice utilizes **condition code 52** when discharging for the reason of patient leaving the service area and entering a non-contract facility (CR 7677)

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Discharge planning

- **Refer to follow up medical services; examples could include:**
  - Attending physician
  - Home health care
  - Outpatient therapy
- **Refer to follow up counseling services**
- **Educate patient/ family regarding:**
  - Medications, treatments, supplies, etc…
  - Follow up with referrals and attending physician
  - Reelection of hospice services in the future
- **If patient elects hospice in the future, they are admitted to the next benefit period**

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Patients and the ER

- **If a patient seeks emergent care at an ED related to terminal illness does the hospice discharge the patient from hospice services?**
  - This situation is not an "automatic" discharge
  - Consider your education to the patient
    - Did your hospice educate the patient that all care related to the terminal illness must be approved by the hospice prior to its provision?
    - Did your hospice educate the patient that the patient would be liable for all cost if they sought care related to the terminal illness without hospice approval?

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Patients seeking emergent care

- **When a hospice patient goes to a hospital for care for the terminal illness or related conditions without the hospice arranging for it, who is responsible for the bill?**
  - For the duration of an election of hospice care, an individual waives all rights to Medicare payments for any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected, or a related condition. If a beneficiary seeks hospital care for the terminal illness or related conditions without the hospice arranging it, then the beneficiary is liable for the cost of that hospital stay.
    - (CMS FAQ7645)

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Add to patient information

- Statement that all care related to the terminal illness must be approved by the hospice prior to its provision
- Statement that the patient would be liable for all cost if they sought care related to the terminal illness without hospice approval
- Provide a list of contracted facilities
- Review information at start of care and periodically thereafter
  - Especially if family is anxious or dysfunctional

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ABN or NOMNC?

- **Neither the Advance Beneficiary Notice (ABN) or the Notice of Medicare Non-Coverage forms are issued for the patient leaving the service area**

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Discharge-No Longer Terminally Ill

- Discharge when a patient is no longer terminally ill should never be a last minute event for the IDG
- Consistent evaluative lead up to determination to discharge for this reason should have been over a period of time
- Discussion of disease plateau should have been discussed with patient and family prior to notice of discharge

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Patient/ family considerations

- **Add information to your patient handout materials:**
  - Patient will be discharged if hospice physician deems patient as no longer terminally ill in their medical judgment
  - Patient has the right to appeal the discharge decision
  - Hospice will provide discharge planning prior to discharge
- **Review information at intervals with the patient and family**

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Discharge-No Longer Terminally Ill (cont.)

- **Discharge planning:**
  - Plan for any necessary counseling, patient education, or other services
- **CMS notes, "Discharge is not expected to be the result of a single moment that does not allow time for some post-discharge planning"**
  - When IDG is following their patient, and if there are indications of improvement in the individual's condition such that the patient may soon no longer be eligible, then discharge planning should begin
  - Discharge planning is expected to be a process, and planning should begin before the discharge date

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Discharge-No Longer Terminally Ill

- **The notification:**
  - A **2-day** minimum notice of discharge provided to patient / family
    - If state regulations require more than 2 days discharge notice, then the hospice follows the more stringent requirement

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Notice of Medicare Non-Coverage

- **Hospice issues the UPDATED Notice of Medicare Non-Coverage form (NOMNC)** *Form CMS-10123*
  - This notice informs the patient that Medicare probably will not pay for hospice because they no longer meet hospice criteria
  - Form must be verbally reviewed with beneficiary/ representative and signed by such
  - Applicable forms:
    - https://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_NOMNC_Eng-Sp-.zip
    - https://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_InstructionsforNOMNC.pdf

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Notice of Medicare Provider Non-coverage - Detailed

- **Patient/ rep. wishes to appeal discharge decisions**
- **The UPDATED Detailed Explanation of Non-coverage form -** *- Form CMS-10124* Provided to the beneficiary/representative by the hospice when the family has appealed to the state's Quality Improvement Organization (QIO)
  - Form must verbally reviewed with beneficiary/ representative
  - The decision from the QIO is binding
  - Form and instructions are available at:
    - http://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_DENC_Eng-Sp-.zip
    - http://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_InstructionsforDENC.pdf

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Expedited review

- **The QIO is responsible for immediately contacting the provider if a beneficiary requests an expedited review and then making a decision no later than 72 hours after receipt of the beneficiary's request**
- **The provider is responsible for providing the QIO with a detailed explanation of why coverage is ending**
- **The provider may need to present additional information to the QIO for the QIO to use in making a decision**

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Expedited review, cont…

- **If the QIO sustains the decision to terminate/discharge services, the beneficiary may request expedited reconsideration, orally or in writing, by noon of the calendar day following initial notification**
- **Expedited reconsiderations are to be conducted by the "appropriate" Qualified Independent Contractor, or QIC**

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Issuance of the ABN and discharge

- **Mandatory use of the ABN is very limited for hospices**
- **If upon discharge the patient wants to continue receiving hospice care that will not be covered by Medicare, the hospice would issue an ABN to the beneficiary in order to transfer liability for the non-covered care to the beneficiary**
- **The ABN must be verbally reviewed and any questions raised during that review must be answered before it is signed**

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Issuance of the ABN and discharge

- **Must be delivered far enough in advance that the beneficiary or representative has time to consider the options and make an informed choice (2 day minimum)**
- **Once all blanks are completed and the form is signed, a copy is given to the beneficiary or representative**
- **In all cases, the notifier must retain the original notice on file**

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The ABN form

- **The Advance Beneficiary Notice form**
  - *Form CMS-R-131*
  - The latest version of the ABN (with the release date of 3/2011 printed in the lower left hand corner) is now available for immediate use
    - Revised ABN CMS-R-131 Form and Instructions [zip, 58kb]
    - Revised ABN Manual Instructions [pdf, 316kb]
    - Revised ABN CMS-R-131 Implementation Announcement [pdf, 9kb]

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Discharge for Cause

- **Before discharging a patient for cause:**
  - Advise the patient that a discharge for cause is being considered
  - Make a serious effort to resolve the problem(s) presented by the patient's behavior or situation
  - Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into its medical records
- **Discharge for cause can never be for:**
  - Financial issues (i.e.: costs for care are high)
  - Because the hospice does not like the patient or family

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Discharge for Cause

- **Each hospice must formulate its own discharge policy and apply it equally to all patients**
- **Your hospice has to determine what does "patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired" mean**

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Examples of discharge for cause

- **Cases where patients consistently refuse to permit the hospice to visit or deliver care**
- **It is dangerous for staff to visit the home**
- **Patient repeatedly leaves the service area**
  - Federal Register / Vol. 70, No. 224 / Tuesday, November 22, 2005 / Rules and Regulations

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Discharge for Cause

- **CMS requirement-effective January 2009 required to identify discharge for cause on hospice claim form**
  - H2 condition code
- **Providers required to report patients discharged for cause to:**
  - State survey agency
  - MAC

State Operations Manual ; Chapter 2 - The Certification Process; Section 2082

- **Part of ongoing effort to collect additional data on hospice**

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ABN or NOMNC?

- **Neither the Advance Beneficiary Notice (ABN) or the Notice of Medicare Non Coverage forms are issued for this discharge for cause**

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Revoking Hospice

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§418.28: Revoking the Election of Hospice Care

- **A patient may revoke their election of the hospice benefit at any time by filing a signed statement and the date the revocation is to be effective which can be no earlier than the date the revocation is made**
  - Upon revocation the patient resumes Medicare coverage of benefits waived at election of hospice

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Important Points - Revocation

- **Can only be done by the patient or his/her representative**
- **Must be done in writing—no accommodation for a verbal revocation**
- **Cannot backdate a revocation**
- **A hospice may never "revoke a patient's" hospice benefit**
- **A hospice has a responsibility to counsel the beneficiary on the availability of revocation**

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Important Points – Revocation, cont…

- **The beneficiary does not have to provide a reason for revocation**
- **Hospice documentation should include the circumstances around the revocation**
- **The patient is free to re-elect hospice at any time**
  - There must be at least one calendar day between as CMS Common Working File cannot accommodate same day revocation and reelection

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Condition code – Revocation

- **Occurrence Code 42**

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Transfer of Hospice

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§418.30 Change of Designated Hospice

- **A patient may change or transfer hospices once in a benefit period by filing a statement with the current and new hospice and the effective date**
- **Cannot transfer hospices again in the same period**
  - Must revoke from the current hospice and elect with the new hospice

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Condition code – Transfer

- Patient Status **Code 50 or 51**
- No other indicator necessary

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Benefit Period

- **90, 90, unlimited 60 day periods**
  - **Discharges**
    - Start new/next benefit period when re-elect
  - **Revocations**
    - Start new/next benefit period when re-elect
  - **Transfers**
    - Only 1x per benefit period
    - If second time in benefit period, discharge and readmit in next benefit period

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Who initiates?

- **Discharges**
  - Hospice takes action
- **Revocations**
  - Patient takes action
- **Transfers**
  - Patient takes action

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Questions

NHPCO members enjoy unlimited access to Regulatory Assistance
Feel free to email questions to regulatory@nhpco.org

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Regulatory and Compliance Team at NHPCO

Jennifer Kennedy, MA, BSN, CHC
Director, Regulatory and Compliance

Judi Lund Person, MPH
Vice President, Compliance and Regulatory Leadership

Email us at: regulatory@nhpco.org

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Resources for Success

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NHPCO Resources

- **Certification and Recertification of Hospice Terminal Illness:** Maps to Guide Hospice Admissions, Version 2.1
  - NHPCO Marketplace
- Initial Certification of the Hospice Terminal Illness Compliance Guide (Revised Dec 2013)
- Recertification of the Hospice Terminal Illness Compliance Guide (Revised Dec 2013)
- Components of the Medicare Hospice Certification and Recertification Form (NEW – Dec 2013)
- Certification of Terminal Illness Audit Compliance Tool, Dec 2013 (NEW – Dec 2013)

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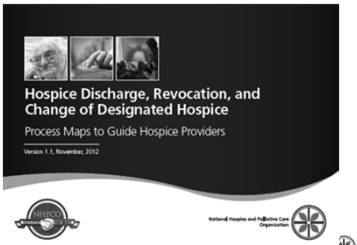
Hospice Discharge, Revocation, and Change of Designated Hospice Provider Process Maps to Guide Hospice Providers

Available for purchase in NHPCO's Marketplace



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More NHPCO Resources

- Advance Beneficiary Notice of Non-coverage (ABN) and Notice of Medicare Non Coverage in Hospice (NOMNC); Tips for Hospice Providers (Revised NOV 14, 2012)
- *Discharge Tip Sheet (April 2013)*

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NHPCO NewsLine Article- A Hospice Provider's Guide to Live Discharges (Sep 2012)

http://www.nhpco.org/sites/default/files/public/newsline/2012/NL_September12.pdf

References

CMS Hospice Center
- http://www.cms.hhs.gov/center/hospice.asp
  - Hospice Care Amendments (CMS-1022-F) (issued November 22, 2005)
  - Conditions of Participation Hospice
  - Medicare Benefit Policy Manual; Chapter 9 - Coverage of Hospice Services

CMS Beneficiary Notices Initiative
- http://www.cms.gov/Medicare/Medicare-General-Information/BNI/FFSEDNotices.html

NHPCO Regulatory Page
http://www.nhpco.org/resources/regulatory

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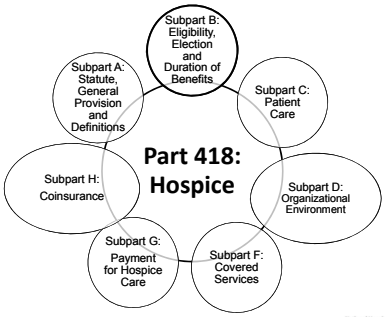

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The CTI has several components

No valid certification period without applicable components

	1st 90-day period	2nd 90-day period	1st and subsequent 60-day periods
Verbal certification	☑ If written certification is not obtained within 2 days of the start of care date ☑ No physician signature required	☑ If written certification is not obtained within 2 days of the start of care date ☑ No physician signature required	☑ If written certification is not obtained within 2 days of the start of care date ☑ No physician signature required
Written certification form	☑ Signed by attending physician and hospice medical director/ hospice physician ☑ Physician signature and date required	☑ Signed by hospice medical director/ hospice physician ☑ Physician signature and date required	☑ Signed by hospice medical director/ hospice physician ☑ Physician signature and date required
Face-to-face encounter attestation statement			☑ Face-to-Face encounter attestation statement ☑ Physician/ NP signature and date required below attestation
Physician narrative statement and attestation statement	☑ Narrative statement ☑ Attestation statement ☑ Physician signature required below attestation	☑ Narrative statement ☑ Attestation statement ☑ Physician signature required below attestation	☑ Narrative statement ☑ Attestation statement ☑ Physician signature required below attestation

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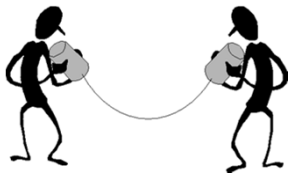
Verbal Certification



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Verbal certification of terminal illness

- If no written certification within 2 calendar days, must obtain oral certification within 2 calendar days after the start of care.
- Suggested content of the verbal certification to include:
  - Statement of terminal illness - suggested text below:
    I certify that (***Beneficiary's Name***) is terminally ill with a life expectancy of six months or less if the terminal illness runs its normal course.
  - Certification period dates - suggest that dates appear as "from and through" dates; suggested text below:
  - Certification period dates: ____/____/____ to ____/____/____

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The verbal certification of terminal illness form

- Staff signature
  - The hospice staff member documenting the verbal certification from the physician should print, sign, and date their name under the verbal certification statement
  - A physician signature is not required for the verbal certification
- The verbal certification can be documented separately or on the written certification form

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Written Certification

97

Written certification of terminal illness form

- **First 90-day certification period**
  - The patient's attending physician (if any) **and** the hospice medical director/ hospice physician are required to certify the patient's terminal illness.
  - Each physician should certify the patient's terminal illness on a separate certification form.
  - If the hospice physician is also the patient's chosen attending physician, then the hospice physician signs the certification in each role.
  - No billing until written certification obtained from both physicians
- May be completed up to 15 days before the start of the next benefit period

98

The written certification of terminal illness form

- **Second 90-day certification period**
  - This is a recertification.
  - Only the hospice medical director/ hospice physician is required to certify the patient's terminal illness.
  - If the hospice physician is also the patient's chosen attending physician, then the hospice physician signs the certification in each role.
  - No billing until written certification obtained

99

Written certification of terminal illness form

The certification of terminal illness **must include:**

- **Statement of terminal illness** - suggested text below:

  I certify that (***Beneficiary's Name***) is terminally ill with a life expectancy of six months or less if the terminal illness runs its normal course.
- **Certification period dates** - suggest that dates appear as **"from and through"** dates; suggested text below:

  Certification period dates: ____/____/____ to ____/____/____
- Optional additions on certification form
  - Effective date of certification: ____/____/____
  - Terminal diagnosis

100

Brief physician narrative statement & attestation

- **The narrative statement must be composed by the certifying physician per federal hospice regulations.** (§418.22 Certification of Terminal Illness, 2010)
- NHPCO recommends that the hospice medical director/ hospice physician compose the narrative statement versus the attending physician for the first 90-day certification period.
  - hospice medical director/hospice physician is more knowledgeable about the wording requirements in the narrative statement.
- Physician required to review the individual's clinical circumstances and synthesize the medical information to provide written clinical justification for admission to hospice services in the form of a physician narrative.

101

Brief physician narrative statement and attestation

- Content of the physician narrative should include reference to applicable LCDs, prognostic indicators, and/or symptom management scale outcomes.
- The narrative statement can be part of the certification of terminal illness form or it can be an addendum to the certification form.
  - If the narrative statement is an addendum, indicate that it is an addendum on the certification of terminal illness form.

102

Brief physician narrative statement and attestation

- An attestation statement must be included with the physician narrative statement. NHPCO suggested text follows:

  Physician narrative attestation: I confirm that I composed this narrative statement and that it is based on my review of the patient's medical record and/or examination of the patient.

103

Brief physician narrative statement and attestation

- **Physician signature**
  - The certifying physician's printed name, signature, and date should appear below the attestation statement.
  - If the physician forgets to date the certification, a notarized statement or some other acceptable documentation can be obtained to verify when the certification was obtained

104

First and subsequent 60-day certification periods

- Same certification components **plus** face-to-face encounter
- Face-to-face encounter timing:
  - Up to 30 days before the start of the benefit period
  - On the first day of the new benefit period is allowable
- Encounter may be completed by a hospice physician or nurse practitioner
  - Physicians may be direct hires, contracted, or volunteers
  - NP's must be employed by the hospice or larger organization if hospice a component of system

105

First and subsequent 60-day certification periods

- Documentation of face-to-face encounter is the attestation statement
  - Suggested attestation text when the face-to-face encounter visit is completed by the certifying physician:

I confirm that I had a face-to-face encounter with (*Beneficiary's Name*) on (___/___/___date) and that the clinical findings of that encounter have been used in determining continued eligibility for hospice care.

106

First and subsequent 60-day certification periods

- Suggested attestation text when the face-to-face encounter visit is completed by the non-certifying physician or NP :

I confirm that I had a face-to-face encounter with (*Beneficiary's Name*) on (___/___/___date) and that the clinical findings of that encounter have been provided to the certifying physician for use in determining continued eligibility for hospice care.

107

First and subsequent 60-day certification periods

- Signature on the face-to-face encounter attestation statement
  - The date of the face-to-face encounter visit and the date the physician/ NP signs the face-to-face encounter attestation statement; do not need to be the same date.
  - The physician or NP's printed name, signature, and date should appear below the face-to-face encounter attestation statement.

108

Missed/ late face-to-face encounter

- If face-to-face encounter is not completed timely, the patient ceases to be eligible for the Medicare Hospice Benefit.
- The patient must be "discharged from" and "readmitted to" the Medicare Hospice Benefit.
- The hospice provider continue to provider care to the patient at their own cost during uncovered period.
- No billing until new face-to-face encounter is completed.
- A face-to-face encounter is attached to a benefit period.

109

Timeframe exceptional circumstances

- Applicable to the 3rd or subsequent benefit periods
- New admits
- Exceptional circumstances may prevent a face-to-face encounter prior to the start of the benefit period
- Examples:
  - patient is an emergency weekend admission, it may be impossible for a hospice physician or NP to see the patient until the following Monday.
  - CMS data systems are unavailable, the hospice may be unaware that the patient is in the third benefit period.

110

Timeframe exceptional circumstances

- Circumstances must be documented
- Face-to-face encounter which occurs within 2 days after admission will be considered to be timely.
- In documented cases where patient dies within 2 days of admission without a face-to-face encounter, a face-to-face encounter can be deemed as complete.

111

Election of Hospice

112

§418.24 Election of hospice care

- Patient waives all rights to traditional Medicare payments under part A
- No verbal elections allowable
  - Election is a written signature by patient or representative
- Election form can designate a future effective date
- Effective date of the election is the first day of billing per CMS

113

Election form content

- Name of hospice provider
- Patient/representative's acknowledgment that they have been given a full understanding of hospice care, **particularly the palliative rather than curative nature of treatment**
  - The bold text is the update to this requirement outlined in CR 7337 issued on March 2, 2011 with an implementation date of March 23, 2011.
- Patient/representative's acknowledgment that they understand certain Medicare services are waived by the election.
- The effective date of the election.
  - A future effective date may be designated by the patient/representative, but it may not be backdated.
- The signature of the individual or representative.

114

Admission to Hospice

115

§418.25 Admission to hospice care

- Patient admitted only upon recommendation of medical director in consultation with, or with input from, patient's attending physician.
- In reaching a decision to certify that the patient is terminally ill, the hospice medical director must consider at least the following information:
  (1) Diagnosis of the terminal condition of the patient.
  (2) Other health conditions, whether related or unrelated to the terminal condition.
  (3) Current clinically relevant information supporting all diagnoses.

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Discharge from Hospice

117

§418.26 – Discharge from Hospice Care

- **Reasons for hospice discharge:**
  - Patient moves out of the hospice's service area or transfers to another hospice; patient enters non-contract facility (CR 7677)
  - The hospice determines that the patient is no longer terminally ill; or
  - The hospice determines that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative

❖ **Discharge is a hospice decision**

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418.26 – Discharge from Hospice Care

- **When discharging patient for these reasons:**
  - Hospice must obtain a written physician's discharge order from the hospice physician
  - Attending physician should be consulted before discharge and his or her review and decision included in the discharge note
  - Discharge planning completed by hospice provider

119

Examples of patient leaving service area

- When a hospice patient moves to another part of the country
- When a hospice patient leaves the area for a vacation (optional… not required)
- When a hospice patient is admitted to a hospital or SNF that does not have a contractual arrangement with the hospice

120

Condition code – leaving service area

- Hospice utilizes **condition code 52** when discharging for the reason of patient leaving the service area and entering a non-contract facility (CR 7677)

121

Discharge planning

- **Refer to follow up medical services; examples could include:**
  - Attending physician
  - Home health care
  - Outpatient therapy
- **Refer to follow up counseling services**
- **Educate patient/ family regarding:**
  - Medications, treatments, supplies, etc…
  - Follow up with referrals and attending physician
  - Reelection of hospice services in the future
- **If patient elects hospice in the future, they are admitted to the next benefit period**

122

Patients and the ER

- **If a patient seeks emergent care at an ED related to terminal illness does the hospice discharge the patient from hospice services?**
  - This situation is not an "automatic" discharge
  - Consider your education to the patient
    - Did your hospice educate the patient that all care related to the terminal illness must be approved by the hospice prior to its provision?
    - Did your hospice educate the patient that the patient would be liable for all cost if they sought care related to the terminal illness without hospice approval?

123

Patients seeking emergent care

- **When a hospice patient goes to a hospital for care for the terminal illness or related conditions without the hospice arranging for it, who is responsible for the bill?**
  - For the duration of an election of hospice care, an individual waives all rights to Medicare payments for any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected, or a related condition. If a beneficiary seeks hospital care for the terminal illness or related conditions without the hospice arranging it, then the beneficiary is liable for the cost of that hospital stay.
    - (CMS FAQ7645)

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Add to patient information

- Statement that all care related to the terminal illness must be approved by the hospice prior to its provision
- Statement that the patient would be liable for all cost if they sought care related to the terminal illness without hospice approval
- Provide a list of contracted facilities
- Review information at start of care and periodically thereafter
  - Especially if family is anxious or dysfunctional

125

ABN or NOMNC?

- **Neither the Advance Beneficiary Notice (ABN) or the Notice of Medicare Non-Coverage forms are issued for the patient leaving the service area**

126

Discharge-No Longer Terminally Ill

- Discharge when a patient is no longer terminally ill should never be a last minute event for the IDG
- Consistent evaluative lead up to determination to discharge for this reason should have been over a period of time
- Discussion of disease plateau should have been discussed with patient and family prior to notice of discharge

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Patient/ family considerations

- **Add information to your patient handout materials:**
  - Patient will be discharged if hospice physician deems patient as no longer terminally ill in their medical judgment
  - Patient has the right to appeal the discharge decision
  - Hospice will provide discharge planning prior to discharge
- **Review information at intervals with the patient and family**

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Discharge-No Longer Terminally Ill (cont.)

- **Discharge planning:**
  - Plan for any necessary counseling, patient education, or other services
- **CMS notes, "Discharge is not expected to be the result of a single moment that does not allow time for some post-discharge planning"**
  - When IDG is following their patient, and if there are indications of improvement in the individual's condition such that the patient may soon no longer be eligible, then discharge planning should begin
  - Discharge planning is expected to be a process, and planning should begin before the discharge date

129

Discharge-No Longer Terminally Ill

- **The notification:**
  - A **2-day** minimum notice of discharge provided to patient / family
    - If state regulations require more than 2 days discharge notice, then the hospice follows the more stringent requirement

130

Notice of Medicare Non-Coverage

- **Hospice issues the UPDATED Notice of Medicare Non-Coverage form (NOMNC)** *Form CMS-10123*
  - This notice informs the patient that Medicare probably will not pay for hospice because they no longer meet hospice criteria
  - Form must be verbally reviewed with beneficiary/ representative and signed by such
  - Applicable forms:
    - https://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_NOMNC_Eng-Sp-.zip
    - https://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_InstructionsforNOMNC.pdf

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Notice of Medicare Provider Non-coverage - Detailed

- **Patient/ rep. wishes to appeal discharge decisions**
- **The UPDATED Detailed Explanation of Non-coverage form - -** *Form CMS-10124* Provided to the beneficiary/representative by the hospice when the family has appealed to the state's Quality Improvement Organization (QIO)
  - Form must verbally reviewed with beneficiary/ representative
  - The decision from the QIO is binding
  - Form and instructions are available at:
    - http://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_DENC_Eng-Sp-.zip
    - http://www.cms.gov/Medicare/Medicare-General-Information/BNI/Downloads/UPDATED_InstructionsforDENC.pdf

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Expedited review

- **The QIO is responsible for immediately contacting the provider if a beneficiary requests an expedited review and then making a decision no later than 72 hours after receipt of the beneficiary's request**
- **The provider is responsible for providing the QIO with a detailed explanation of why coverage is ending**
- **The provider may need to present additional information to the QIO for the QIO to use in making a decision**

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Expedited review, cont…

- **If the QIO sustains the decision to terminate/discharge services, the beneficiary may request expedited reconsideration, orally or in writing, by noon of the calendar day following initial notification**
- **Expedited reconsiderations are to be conducted by the "appropriate" Qualified Independent Contractor, or QIC**

134

Issuance of the ABN and discharge

- **Mandatory use of the ABN is very limited for hospices**
- **If upon discharge the patient wants to continue receiving hospice care that will not be covered by Medicare, the hospice would issue an ABN to the beneficiary in order to transfer liability for the non-covered care to the beneficiary**
- **The ABN must be verbally reviewed and any questions raised during that review must be answered before it is signed**

135

Issuance of the ABN and discharge

- **Must be delivered far enough in advance that the beneficiary or representative has time to consider the options and make an informed choice (2 day minimum)**
- **Once all blanks are completed and the form is signed, a copy is given to the beneficiary or representative**
- **In all cases, the notifier must retain the original notice on file**

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The ABN form

- **The Advance Beneficiary Notice form**
  - *Form CMS-R-131*
  - The latest version of the ABN (with the release date of 3/2011 printed in the lower left hand corner) is now available for immediate use
    - Revised ABN CMS-R-131 Form and Instructions [zip, 58kb]
    - Revised ABN Manual Instructions [pdf, 316kb]
    - Revised ABN CMS-R-131 Implementation Announcement [pdf, 9kb]

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Discharge for Cause

- **Before discharging a patient for cause:**
  - Advise the patient that a discharge for cause is being considered
  - Make a serious effort to resolve the problem(s) presented by the patient's behavior or situation
  - Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into its medical records
- **Discharge for cause can never be for:**
  - Financial issues (i.e.: costs for care are high)
  - Because the hospice does not like the patient or family

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Discharge for Cause

- **Each hospice must formulate its own discharge policy and apply it equally to all patients**
- **Your hospice has to determine what does "patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired" mean**

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Examples of discharge for cause

- **Cases where patients consistently refuse to permit the hospice to visit or deliver care**
- **It is dangerous for staff to visit the home**
- **Patient repeatedly leaves the service area**
  - Federal Register / Vol. 70, No. 224 / Tuesday, November 22, 2005 / Rules and Regulations

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Discharge for Cause

- **CMS requirement-effective January 2009 required to identify discharge for cause on hospice claim form**
  - H2 condition code
- **Providers required to report patients discharged for cause to:**
  - State survey agency
  - MAC

State Operations Manual ; Chapter 2 - The Certification Process; Section 2082

- **Part of ongoing effort to collect additional data on hospice**

141

ABN or NOMNC?

- **Neither the Advance Beneficiary Notice (ABN) or the Notice of Medicare Non Coverage forms are issued for this discharge for cause**

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Revoking Hospice

143

§418.28: Revoking the Election of Hospice Care

- **A patient may <u>revoke</u> their election of the hospice benefit at any time by filing a signed statement and the date the revocation is to be effective which can be no earlier than the date the revocation is made**
  - Upon revocation the patient resumes Medicare coverage of benefits waived at election of hospice

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Important Points - Revocation

- **Can only be done by the patient or his/her representative**
- **Must be done in writing—no accommodation for a verbal revocation**
- **Cannot backdate a revocation**
- **A hospice may never "revoke a patient's" hospice benefit**
- **A hospice has a responsibility to counsel the beneficiary on the availability of revocation**

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Important Points – Revocation, cont…

- **The beneficiary does not have to provide a reason for revocation**
- **Hospice documentation should include the circumstances around the revocation**
- **The patient is free to re-elect hospice at any time**
  - There must be at least one calendar day between as CMS Common Working File cannot accommodate same day revocation and reelection

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Condition code – Revocation

- **Occurrence Code 42**

147

Transfer of Hospice

148

§418.30 Change of Designated Hospice

- **A patient may change or transfer hospices once in a benefit period by filing a statement with the current and new hospice and the effective date**
- **Cannot transfer hospices again in the same period**
  - Must revoke from the current hospice and elect with the new hospice

149

Condition code – Transfer

- Patient Status **Code 50 or 51**
- No other indicator necessary

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Benefit Period

- **90, 90, unlimited 60 day periods**
  - **Discharges**
    - Start new/next benefit period when re-elect
  - **Revocations**
    - Start new/next benefit period when re-elect
  - **Transfers**
    - Only 1x per benefit period
    - If second time in benefit period, discharge and readmit in next benefit period

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Who initiates?

- **Discharges**
  - Hospice takes action
- **Revocations**
  - Patient takes action
- **Transfers**
  - Patient takes action

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Questions

NHPCO members enjoy unlimited access to Regulatory Assistance
Feel free to email questions to regulatory@nhpco.org

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Regulatory and Compliance Team at NHPCO

Jennifer Kennedy, MA, BSN, CHC
Director, Regulatory and Compliance

Judi Lund Person, MPH
Vice President, Compliance and Regulatory Leadership

Email us at: regulatory@nhpco.org

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Resources for Success

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NHPCO Resources

- **Certification and Recertification of Hospice Terminal Illness:** Maps to Guide Hospice Admissions, Version 2.1
  - NHPCO Marketplace
- Initial Certification of the Hospice Terminal Illness Compliance Guide (Revised Dec 2013)
- Recertification of the Hospice Terminal Illness Compliance Guide (Revised Dec 2013)
- Components of the Medicare Hospice Certification and Recertification Form (NEW – Dec 2013)
- Certification of Terminal Illness Audit Compliance Tool, Dec 2013 (NEW – Dec 2013)

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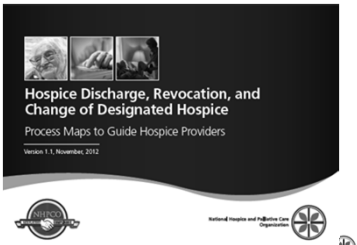
Hospice Discharge, Revocation, and Change of Designated Hospice Provider Process Maps to Guide Hospice Providers

Available for purchase in NHPCO's Marketplace



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More NHPCO Resources

- Advance Beneficiary Notice of Non-coverage (ABN) and Notice of Medicare Non Coverage in Hospice (NOMNC); Tips for Hospice Providers (Revised NOV 14, 2012)
- *Discharge Tip Sheet (April 2013)*

National Hospice and Palliative Care Organization

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NHPCO NewsLine Article- A Hospice Provider's Guide to Live Discharges (Sep 2012)

http://www.nhpco.org/sites/default/files/public/newsline/2012/NL_September12.pdf

National Hospice and Palliative Care Organization

References

CMS Hospice Center
- http://www.cms.hhs.gov/center/hospice.asp
  - Hospice Care Amendments (CMS-1022-F) (issued November 22, 2005)
  - Conditions of Participation Hospice
  - Medicare Benefit Policy Manual; Chapter 9 - Coverage of Hospice Services

CMS Beneficiary Notices Initiative
- http://www.cms.gov/Medicare/Medicare-General-Information/BNI/FFSEDNotices.html

NHPCO Regulatory Page
http://www.nhpco.org/resources/regulatory

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