

# REINHART

## HOSPICE AND PALLIATIVE CARE PRACTICE GROUP

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### **HOSPICES ALERTED TO THE IMPORTANCE OF A VALID NOTICE OF ELECTION FOR THE MEDICARE HOSPICE BENEFIT**

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The Centers for Medicare and Medicaid Services ("CMS") now requires Regional Home Health Intermediaries ("RHHIs") to instruct hospices to submit a valid beneficiary notice of election of the Medicare Hospice Benefit ("NOE") when claims are selected for Additional Development Request (or "ADR"). Failure to submit the NOE or submitting a form that does not comply with the CMS requirements may result in claim denials.

Hospices can review the regulatory requirements for the NOE by reading 42 C.F.R. 418.24. This regulation includes information on the required content of the NOE, the duration of the Medicare Hospice Benefit election, the waiver of other Medicare benefits and the re-election of hospice benefits. CMS does not mandate a specific form, therefore hospices should review this regulation when developing or revising their NOE.

In addition to the Medicare regulations, hospices should review the CMS Manual System (the "Manual") for guidance on the requirements of the NOE. Publication 100-02, Chapter 9, Section 20.2 of the Manual states that a NOE must include all of the following information:

- Identification of the particular hospice that will provide care to the individual;
- The individual's or representative's (as applicable) acknowledgement that the individual has been given a full understanding of hospice care;
- The individual's or representative's (as applicable) acknowledgement that the individual understands that certain

Medicare services are waived by the election;

- The effective date of the election; and
- The signature of the individual or representative.

This list of requirements is sometimes called the "Five Rights" of hospice patients. Some are self-explanatory; others merit further discussion. For example, according to 42 C.F.R. 418.24(b), a "full understanding of hospice care" means that the patient understands the palliative rather than curative nature of hospice care as it relates to the hospice patient's terminal illness. The exact services waived by the patient electing the Medicare Hospice Benefit are explained in more detail in 42 C.F.R. 418.24(d). A hospice should be able to document that the hospice patient received information about the specific Medicare benefits that the hospice patient must waive upon election of the Medicare Hospice Benefit and that the patient understood this information.

Every hospice should review its standard NOE to ensure that the election statement clearly contains the above information. Cahaba GBA includes a sample NOE in their Medicare Reference Guide that hospices can refer to as they review their current NOE. However, given the specificity of the requirements found in 42 CFR 418.24, hospices should review their admission packet in its entirety to make sure that their hospice patients receive all of the required information upon admission to the Medicare Hospice Benefit. This may also be a good time to ensure that the hospice's entire admission packet (which may include, for example, the informed consent form, NOE, patient service agreements, patient handbook, notice of privacy practices, etc.) is compliant and that the documents are consistent with state and federal requirements and sound hospice practices. As hospices attempt to "soften" the language in their admission documents or combine multiple forms into one document, they may accidentally eliminate key information required by the Medicare hospice regulations, CMS guidance or state law.

### **Additional Resources**

#### **42 C.F.R. 418.24**

[http://a257.g.akamaitech.net/7/257/2422/09nov20051500/edocket.access.gpo.gov/cfr\\_2005/octqtr/pdf/42cfr418.24.pdf](http://a257.g.akamaitech.net/7/257/2422/09nov20051500/edocket.access.gpo.gov/cfr_2005/octqtr/pdf/42cfr418.24.pdf)

## **Manual Publication 100-02, Chapter 9, Section 20.2**

<http://www.cms.hhs.gov/manuals/Downloads/bp102c09.pdf>

### **Cahaba GBA Sample NOE – See Section 130.10 of Cahaba Medicare Reference Guide – Coverage Guidelines**

[https://www.cahabagba.com/part\\_a/education\\_and\\_outreach/educational\\_materials/hospice\\_coverage.pdf](https://www.cahabagba.com/part_a/education_and_outreach/educational_materials/hospice_coverage.pdf)

Reinhart Boerner Van Deuren's Hospice and Palliative Care Practice Group serves hospices across the country in a variety of areas, including: regulatory compliance; survey and certification; accreditation; licensing; HIPAA; caregiver misconduct investigations; due diligence, mergers and acquisitions and other corporate matters; labor and employment; criminal and civil investigations by state or federal government agencies; litigation; contracts and daily operational issues.



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Hospices are encouraged to contact their legal counsel.