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## A Small Technical Mistake Can Lead to Big Medicare Claim Denials

Medicare regional home health and hospice intermediaries (RHHI) are denying otherwise proper claims for clinically-appropriate hospice services due to a hospice's faulty physician certification of terminal illness (COTI) or notice of election (NOE) statement reviewed by the RHHI as part of an Additional Development Request (ADR). These technical denials can be crippling to a hospice, especially if the hospice ends up on targeted medical review because most or all claims on ADR are denied due to the technical defect.

This article will discuss the legal requirements for COTI and NOE statements under Medicare regulations. We hope that this information will help hospices determine whether their policies and procedures for obtaining COTI statements and the NOE statements obtained upon admission are compliant with Medicare rules and regulations.

### 1. Certification of Terminal Illness Statement.

Medicare regulations require that a hospice obtain written COTI statement(s) for each certification period (initial and subsequent periods) before it submits a claim for payment.<sup>1</sup> The written COTI statement must be signed and dated by the physician giving the certification.

For an initial 90-day certification period, the hospice must obtain the COTI statement from both the hospice medical director (or physician member of the interdisciplinary team) and the patient's attending physician (if any).<sup>2</sup> Each COTI must be obtained no later than two calendar days after hospice care is initiated. If the hospice cannot obtain written COTI statements within that two-day period, it may obtain a verbal COTI statement from each physician followed up by the written COTIs prior to submission of a claim for payment.<sup>3</sup> Hospice staff must make an appropriate entry in the patient's medical record as soon as an oral COTI statement is received, and the written COTI statements must also be filed in the patient's medical record.<sup>4</sup>

Hospice policies and procedures on verbal COTI statements should ensure that each verbal COTI statement includes each of the following elements: (1) the name of the patient, (2) the name of the physician giving the statement, (3) the patient's terminal diagnosis or diagnoses, (4) a statement that the patient's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course, (5) the benefit period dates, (6) the signature of the staff member who receives the verbal COTI statement, and (7) the date that the hospice receives the verbal COTI statement.

For subsequent periods, the hospice need only obtain a COTI statement from the hospice medical director or physician member of the interdisciplinary team prior to submitting a claim for payment.<sup>5</sup> Again, the hospice must obtain the COTI (either written or verbal) within two calendar days of the first day of each recertification period, and the written certification must again be on file with the hospice before a claim for payment is submitted.

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<sup>1</sup>42 C.F.R. § 418.22(a)(2).

<sup>2</sup>42 C.F.R. § 418.22(c)(1).

<sup>3</sup>42 C.F.R. § 418.22(a)(3).

<sup>4</sup>42 C.F.R. § 418.22(d)(1) and (2).

<sup>5</sup>42 C.F.R. § 418.22(c)(2).

Medicare requires that COTI statements conform to the following requirements:

- The certification "must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course."<sup>6</sup>
- Clinical information and other documentation supporting the medical prognosis must accompany the certification, and must be filed in the medical record with the written certification.<sup>7</sup>

In our experience, technical denials for COTI statement problems most often involve a hospice not obtaining a verbal COTI statement within the appropriate two-day timeframe, or poor documentation of the verbal COTI statement if it was obtained on a timely basis. Denials also occur due to a physician's failure to date the COTI statement. The Medicare Manual states that if a physician fails to date a COTI statement, a "notarized statement or some other acceptable documentation can be obtained to verify when the certification was obtained."<sup>8</sup> Some hospices use date stamping, or point to transmission dates on faxed COTI statements in an attempt to prove the date of a COTI statement. However, the safest course is to educate physicians about the importance of dating the COTI statements and to be vigilant about ensuring that each COTI statement received from a physician includes a date.

Other problems involve the content of the verbal or written COTI statement itself. RHHIs have begun to take the requirement in the first bullet above quite literally, in that RHHIs have denied claims when a hospice submits a COTI statement that does not contain the exact language found in the Medicare regulations. If the RHHI decides that the COTI statement used by a hospice is faulty, this might lead to denials for every claim submitted to the RHHI on ADR because the same language is likely found in all COTI statements. This has several negative results, including cash flow difficulties, the possibility that the RHHI will place the hospice on targeted medical review, and the administrative burden and financial hardship caused by the need to appeal these denied claims and the likelihood that the appeal will not be successful.

Finally, a word about electronic signatures for COTI statements. CMS recently issued a revision to the Medicare Program Integrity Manual stating that COTI statements must be hand written; electronic signatures are no longer acceptable.<sup>9</sup> This change was effective September 3, 2007. However, CMS recently indicated to NHPCO that CMS is in the process of revising this guidance and would release new information to the public shortly.

## **2. Notice of Election Statement.**

RHHIs may also deny hospice claims on ADR if they determine that the hospice patient's NOE statement is lacking, regardless of the fact that clinically appropriate care was provided to the hospice patient. To receive hospice services, Medicare regulations require that each Medicare patient file an NOE statement with a hospice of the patient's choice.<sup>10</sup>

The NOE statement must contain the following:

- Identification of the particular hospice that will provide care to the individual.<sup>11</sup>

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<sup>6</sup>42 C.F.R. § 418.22(b)(1).

<sup>7</sup>42 C.F.R. § 418.22(b)(2).

<sup>8</sup>Medicare Benefit Policy Manual, Chapter 9, Section 20.1.

<sup>9</sup>CMS Manual System, Pub 100-08 Medicare Program Integrity, Change Request 5550 (August 24, 2007).

<sup>10</sup>42 C.F.R. § 418.24(a).

<sup>11</sup>42 C.F.R. § 418.24(b)(1).

- The individual'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."<sup>12</sup>
- Acknowledgement that certain Medicare services are waived by the election.<sup>13</sup>
- 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.<sup>14</sup>
- The signature of the individual (or the individual's authorized representative if the individual is incapacitated).<sup>15</sup>

In our experience, hospices most often miss the requirements found in the second and third bullets listed above. In an attempt to "soften" the language in the NOE form, a hospice might re-work its form and inadvertently remove one of these required elements in the NOE statement. A hospice NOE statement that does not contain one or more of the above elements might lead to claim denials upon review by the RHHI, even if the clinical documentation supporting the hospice claims is adequate. If the RHHI decides that the hospice's NOE statement is faulty, this could lead to a significant number of claim denials for the hospice, again leading to the administrative and financial burdens discussed previously.

### 3. Guidance From Palmetto GBA.

Palmetto GBA, one of the RHHIs currently administering hospice claims for Medicare, has released a bulletin titled "Common Technical Hospice Medical Review Denials and How to Avoid Them." The bulletin provides tips for hospices to avoid technical denials for an invalid NOE form or COTI statement, and includes common problems with NOE forms or COTI statements that Palmetto GBA has identified. This bulletin can be found at [Palmetto GBA's website](#).

In addition to these tips, Palmetto GBA includes an example of a physician COTI statement and a checklist for proper COTI statements as a link to the above-referenced bulletin. While this bulletin and the sample COTI statement are helpful for all hospices to review, please note that other RHHIs might have developed slightly different guidance on this topic when reviewing these forms.

### 4. Conclusion.

Each hospice should carefully review the Medicare regulations discussed in this article and their forms and procedures to confirm that the COTI statements and NOE forms that they use are compliant with the Medicare requirements described above. By precisely complying with the legal requirements listed in this article, hospices are much less likely to be hit with technical denials related to their COTI or NOE statements.

This *Headlines in Hospice and Palliative Care E-Alert* provides general information about hospice and palliative care issues. It should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.

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<sup>12</sup> 42 C.F.R. § 418.24(b)(2).

<sup>13</sup> 42 C.F.R. § 418.24(b)(3).

<sup>14</sup> 42 C.F.R. § 418.24(b)(4).

<sup>15</sup> 42 C.F.R. § 418.24(b)(5).