

# Is Your Hospice Using the Correct Medicare Election Statement?

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One of the top medical review denial reasons for hospices is an invalid Medicare election statement. This statement is required for each Medicare beneficiary receiving hospice services. If the statement does not contain all the required elements it could result in claim denials.

In the fiscal year (FY) 2020 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements final [rule](#), the Centers for Medicare & Medicaid Services (CMS) finalized modifications to the hospice election statement content requirements at [§418.24\(b\)](#) and added a hospice election statement addendum requirement at [§418.24\(c\)](#). CMS then made clarifying modifications in the FY 2022 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice and Home Health Quality Reporting Program Requirements final [rule](#). The modifications and additions to the election statement increase coverage transparency for beneficiaries electing hospice care.

The Medicare hospice election statement is one of two primary technical supporting items for payment. The other is the Certification of Terminal Illness (CTI). Each hospice is able to develop its own Medicare hospice election statement which must contain all the elements as required at [§418.24\(b\)](#). CMS has provided a [model election statement](#) and [model election statement addendum](#) which hospices can use if they so choose. However, as stated above, non-compliance with the election statement requirements remains one of the top reasons for denial of hospice claims payment. The following are some of the reasons for this and suggestions for addressing them:

- **Hospices utilizing an incorrect, older version of the CMS model election statement and/or model election statement addendum.**

**Solution:** CMS updated its model election statement in July 2021 but did not remove the old version from its website. NAHC recently met with CMS' Center for Program Integrity and after we brought this to their attention the link to the old version was removed from the website. It is important to note, however, that an internet search may still return the older version. Therefore, it is important for hospices that utilize the CMS model statement to ensure it is the one dated July 2021.

Also, hospices should recognize that the CMS model election statement is not consistent with all requirements. However, the Medicare Administrative Contractors (MACs) will most often accept the current (dated July 2021) model statement despite the inconsistencies. These are as follows:

- In the section Right to Request “Patient Notification of Hospice Non-Covered Items, Services, and Drugs, the second bullet point states “The hospice must furnish this notification within 5 days, if you request this form on the start of care date, and within 72 hours (or 3 days) if you request this form during the course of hospice care”. These timeframes were revised in 2021 to “If the election statement addendum is requested within 5 days from the date of a hospice election, then the hospice would have 5 days from that request date to furnish the addendum. If the addendum is requested during the course of hospice care (that is, 5 days after the effective date of the hospice election), the hospice must provide this information, in writing, within 3 days of the request to the requesting individual (or representative), non-hospice provider, or Medicare contractor.” This is especially concerning because it incorrectly informs the beneficiary/representative of requirements. NAHC is addressing this with CMS.
- The signature of the beneficiary and the representative appear to be required. It is only when the beneficiary cannot make his/her own healthcare decisions that the representative signature is necessary.
- **Hospices breaking out the required content of the election statement across several documents/not clearly identifying the election statement within the documents provided to the patient.**

**Solution:** Incorporate all required content into one document titled “Medicare Hospice Election Statement”.

- **Hospices do not include all the required content on the hospice-developed election statement.**

**Solution:** NAHC has updated the **Hospice Election Statement and Addendum Toolkit [insert link]** to assist hospices in ensuring compliance with the requirements. This toolkit explains the requirements, includes an audit tool for the election statement and the addendum, and provides links to additional resources.

Hospices should not assume they are utilizing a fully compliant Medicare hospice election statement or election statement addendum. Many are surprised when they receive a denial, or more commonly, denials, since the election statement is tied to all hospice claims for a patient and the same election statement form is usually provided to all patients. The denial language is “The notice of election is invalid because it does not meet statutory/regulatory requirements” or sometimes truncated to “Invalid NOE”. The term “notice of election” is not correct here and NAHC has requested that this be corrected to “election statement”.

Clear guidance to hospices on how to correct an invalid election statement has not been provided by CMS or the MACs. Sometimes hospices are instructed to obtain a signed corrected election statement without a break in the Medicare hospice benefit. Hospices have also been instructed to discharge the patient from the Medicare hospice benefit, while still providing care to the patient at no charge until a signed corrected Medicare hospice election statement is obtained. There are several problems with this including the following:

- None of the existing discharge codes for claims are applicable to this situation and utilizing one of them will artificially inflate a hospice's live discharge rate.
- The patient or representative must sign a new election statement which may be exceptionally difficult, if not impossible, in some situations.
- A new benefit hospice benefit period begins which requires a recertification of terminal illness and possibly a face-to-face encounter.

NAHC has reached out to CMS about these issues and hopes to provide an update soon.