



## **CMS to Scrutinize Hospice Election Statements, Physician Certifications**

H. Carol Saul

As a result of an Office of Inspector General (OIG) report released in September 2016, hospice providers can expect increased survey focus on the content of their hospice election forms and on physician certifications of terminal illness. The OIG based its findings on a review of 565 hospice election statements and certifications from 2012.<sup>1</sup> This article provides a summary of the findings and recommendations from the OIG's report, titled "Hospices Should Improve Their Election Statements and Certifications of Terminal Illness," as well as CMS's response to those recommendations.

OIG found that 35% of the election statements reviewed lacked required text. Some (19%) failed to specifically identify the payor (for instance Medicare, Medicaid, or commercial insurance). OIG stated that failure to do so "[deprived] beneficiaries of critical information" because some Medicaid and commercial insurance programs have eligibility criteria and election periods that are different from Medicare. While this no doubt is a correct statement, we note, however, that the requirement to specify payor source does not appear in CMS's hospice regulations or guidance. The OIG found that other election statements (12%) lacked a statement that the beneficiary understands that in electing hospice, the beneficiary is waiving the right to curative care related to the terminal condition(s). According to the OIG, another 9% lacked an express statement that hospice care is palliative rather than curative. And 4% lacked a clear explanation of how a beneficiary may revoke the hospice election and the circumstances that could lead to a discharge by the hospice as well as the effect of a revocation or discharge.

In response to these OIG findings of election statement deficiencies, CMS stated that it plans to develop and provide a sample text for election statements; however, no timeline for the delivery of the sample text was provided. CMS responded that it will revise its surveyor training to emphasize election statement requirements and will include these topics in annual surveyor training. CMS also noted it will utilize Medicare Administrative Contractors (MACs) to educate hospices on election statement requirements.

The OIG report also reviewed the content of physician certifications of terminal illness (CTI) in the same population of claims. It found that 14% of CTIs failed to meet regulatory requirements, either because the document did not reflect more than minimal physician involvement in making the determination, because a physician narrative discussing clinical findings supporting the certification was absent or insufficient, or because there was no physician attestation. OIG suggested that CMS scrutinize physician narratives and noted that a simple statement of the patient's diagnosis is not sufficient. The OIG recommended that CMS provide additional education focused on certification, and CMS concurred in that recommendation.

As a result of these OIG findings, hospice providers can expect both more guidance from CMS and more surveyor scrutiny of election statements and physician certifications. Now is the time to review forms and self-audit for compliance with regulatory requirements.

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<sup>1</sup> The complete OIG report can be found at <https://oig.hhs.gov/oei/reports/oei-02-10-00492.asp> (last accessed Sept. 25, 2016).

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