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### **Exceptions For Late Hospice Notices of Election Delayed by Medicare Systems**

**Note:** We revised this article on February 11, 2020, to add links to related articles, [MM11049](#) and [MM10967](#). The articles discuss changes to the Common Working File edits for when Notices of Revocation/Termination will be allowed. All other information remains the same.

### **Provider Types Affected**

This MLN Matters® Article is intended for hospices submitting Notices of Election to Medicare Administrative Contractors (MACs) for Medicare beneficiaries.

### **What You Need to Know**

Hospices must file a Notice of Election (NOE) for each patient within 5 calendar days after the effective date of the election. When a hospice's NOE is not submitted and accepted within 5 calendar days after the effective date of election, Medicare will not cover and pay for days of hospice care from the effective date of election to the date of filing of the accepted NOE.

MACs will grant an exception for the late NOE if the hospice is able to provide the MAC with documentation showing:

- (1) When the original NOE was submitted
- (2) When the NOE was returned to the hospice for correction or was accepted and available for correction, and
- (3) When the hospice resubmitted the NOE.

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## Background

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When a NOE is submitted within the 5 day timely filing period, but the NOE contains inadvertent errors (such as transposed numbers in a beneficiary identifier), the error does not trigger the NOE to be immediately returned to the hospice for correction. In these instances, the hospice must wait until the incorrect information is fully processed by Medicare systems before the NOE is returned to the hospice for correction. There are other NOE errors, such as incorrect admission dates, that will not be returned for correction and instead must be finalized and posted by the Medicare systems before the hospice can correct the NOE. These delays occur because the submitted data appears valid to Medicare systems; only the hospice is aware of the error. Such delays in Medicare systems could cause the NOE to be late and thus the days between the effective dates of the election and when the NOE is corrected, resubmitted, and accepted to be non-covered.

Medicare has determined that timely-filed NOEs with inadvertent errors that cannot be immediately corrected due to Medicare system constraints (and thus returned to the provider for correction, causing late system acceptance of NOEs and non-covered days) are outside the control of the hospice and so qualify for an exception to the timely filing requirement in the circumstances described below. All current provider education about errors that can be fixed immediately remain in effect. MACs will grant an exception only for instances where timely-filed NOEs contained errors that could not be immediately corrected due to system constraints.

MACs will grant an exception for the late NOE if the hospice is able to provide the MAC with documentation showing:

- (1) When the original NOE was submitted
- (2) When the NOE was returned to the hospice for correction or was accepted and available for correction, and
- (3) When the hospice resubmitted the NOE.

MACs will grant the exception if all documentation is provided and the hospice took appropriate actions within 2 business days to make corrections. Once the NOE is returned for correction the hospice will have 2 business days to resubmit. When the NOE was posted to the Common Working File (CWF) and must be cancelled and resubmitted, they will have 2 business days to cancel the NOE and then 2 business days to submit the new NOE after the date that the cancellation NOE finalizes.

**If the hospice provides sufficient information in the Remarks section of its claim to allow the MAC to research the case, then MACs will make a determination without requesting the additional supporting documentation described above.** The provider's remarks must clearly indicate the circumstances and time frames in order to substitute for documentation providing the same information. If it does not, MACs will request documentation. Documentation should consist of printouts or screen images of any Medicare systems screens that contain the information shown above. In instances where the MAC suspects a hospice has such a volume of exceptions requests for inadvertent errors that suggests abuse, the MAC may request documentation for every exception request rather than allowing those hospices to utilize the Remarks section of their claim.

MACs have previously educated that hospices need not wait until an NOE is returned to correct many errors. In these instances, an exception will not be granted. It is not appropriate for hospices to submit a partial NOE to fulfill the timely-filing requirement. MACs will not grant exceptions in cases where it appears that the hospice is engaging in such practices. MACs will also not grant exceptions in cases where hospices with multiple provider identifiers submit the identifier of a location that did not actually provide the service.

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Additionally, hospices have reported cases of system delays beyond their control occurring when Medicare systems are not available ("dark days"). In the great majority of cases, the 5 day timely filing period allows enough time to submit NOEs on a day when Medicare systems are available. Additionally, the receipt date is typically applied to the NOE immediately upon submission to Medicare systems, so subsequent dark days would not affect the determination of timeliness. However, hospices report cases in which an NOE is submitted on the day before a dark day period and the NOE does not receive a receipt date until the day following the dark days. If the hospice can provide documentation showing this situation occurred, MACs will grant an exception to the timely filing requirement. The Centers for Medicare & Medicaid Services (CMS) expects these cases to be very rare.

## Additional Information

If you have questions, your MACs may have more information. Find their website at <http://go.cms.gov/MAC-website-list>.

## Document History

Date of Change	Description
February 11, 2020	We revised this article to add links to related articles, <a href="#">MM11049</a> and <a href="#">MM10967</a> . The articles discuss changes to the Common Working File edits for when Notices of Revocation/Termination will be allowed.
October 26, 2018	Initial article released.

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