

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-02 Medicare Benefit Policy	Centers for Medicare & Medicaid Services (CMS)
Transmittal 209	Date: May 8, 2015
	Change Request 9114

Transmittal 205, dated April 3, 2015, is being rescinded and replaced by Transmittal 209 to revise the effective date of the change and to clarify the types of information that the hospice should use to identify the attending physician or nurse practitioner on the election statement. All other information remains the same.

SUBJECT: Updates on Hospice Election Form, Revocation, and Attending Physician

I. SUMMARY OF CHANGES: This instruction implements changes finalized in the FY 2015 hospice rule regarding hospice election, revocation and designation of attending physician.

EFFECTIVE DATE: October 1, 2014

**Unless otherwise specified, the effective date is the date of service.*

IMPLEMENTATION DATE: May 4, 2015

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
R	9/Table of Contents
R	9/20.2/Election, Revocation and Discharge
R	9/20.2.1/Hospice Election
N	9/20.2.1.1/Hospice Notice of Election
N	9/20.2.2/Hospice Revocation
N	9/20.2.3/Hospice Discharge
N	9/20.2.4/Hospice Notice of Termination or Revocation
R	9/40.1.3.1/Attending Physician Services

III. FUNDING:

For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

Business Requirements

Manual Instruction

Attachment - Business Requirements

Pub. 100-02	Transmittal: 209	Date: May 8, 2015	Change Request: 9114
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SUBJECT: Updates on Hospice Election Form, Revocation, and Attending Physician

EFFECTIVE DATE: October 1, 2014

**Unless otherwise specified, the effective date is the date of service.*

IMPLEMENTATION DATE: May 4, 2015

I. GENERAL INFORMATION

A. Background: Upon electing hospice care, the beneficiary waives the right to Medicare payment for any Medicare services related to the terminal illness and related conditions during a hospice election, except when provided by, or under arrangement by, the designated hospice or individual's attending physician if he/she is not employed by the designated hospice (42 CFR 418.24(d)). Prompt filing of the notice of election (NOE) with the Medicare contractor is required to properly enforce this waiver, and prevent inappropriate payments to non-hospice providers. The effective date of hospice election is the same as the hospice admission date.

Upon discharge from hospice or revocation of hospice care, the beneficiary immediately resumes the Medicare coverage that had previously been waived by the hospice election. As such, hospices should record the beneficiary's discharge or revocation in the claims processing system promptly. Doing so protects the beneficiary from experiencing possible delays in accessing needed care.

Hospice beneficiaries have the right to choose their attending physician. *Attending physician* means a—

(1)(i) Doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs that function or action; or

(ii) Nurse practitioner who meets the training, education, and experience requirements as described in 42 CFR 410.75 (b).

(2) Is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care. (See 42 CFR 418.3)

B. Policy: Timely-filed hospice NOEs shall be filed within 5 calendar days after the hospice admission date. A timely-filed NOE is one that is submitted to the Medicare contractor and accepted by the Medicare contractor within 5 calendar days after the hospice admission date. While a timely-filed NOE is one that is submitted to and accepted by the Medicare contractor within 5 calendar days after the hospice election, posting to the CWF may not occur within that same time frame. The date of posting to the CWF is not a reflection of whether the NOE is considered timely-filed. In instances where a NOE is not timely-filed, Medicare shall not cover and pay for the days of hospice care from the hospice admission date to the date the NOE is submitted to, and accepted by, the Medicare contractor. These days shall be a provider liability, and the provider shall not bill the beneficiary for them.

If a hospice fails to file a timely-filed NOE, it may request an exception which, if approved, waives the consequences of filing an NOE late. The four circumstances that may qualify the hospice for an exception to the consequences of filing the NOE more than 5 calendar days after the hospice admission date are as follows:

1. fires, floods, earthquakes, or other unusual events that inflict extensive damage to the hospice's ability to operate;
2. an event that produces a data filing problem due to a CMS or Medicare contractor systems issue that is beyond the control of the hospice;
3. a newly Medicare-certified hospice that is notified of that certification after the Medicare certification date, or is awaiting its user ID from its Medicare contractor; or,
4. other circumstances determined by the Medicare contractor or CMS to be beyond the control of the hospice.

Upon hospice election, the beneficiary must sign and date an election statement and the content of the election statement must fulfill the requirements at 42 CFR 418.24 (b). The election statement must include identification of the particular hospice and of the attending physician that will provide care to the individual. The individual or representative must acknowledge that the identified attending physician was his or her choice.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility								Other
		A/B MAC			D M E	Shared- System Maintainers				
		A	B	H H H		F I S S	M C S	V M S	C W F	
9114.1	Medicare contractors shall be aware of the changes to Notice of Election timely filing requirements and designation of attending physician on the hospice election form as stated in the revised Pub. 100-02, Medicare Benefit Policy Manual, chapter 9, section 20.2 and 40.1.3.1.			X						

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility				
		A/B MAC			D	C
		A	B	H H H	M A C	E D I
9114.2	MLN Article: A provider education article related to this instruction will be available at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/ shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web sites and include information about it in a listserv message within 5 business days after receipt of the notification from CMS announcing the availability of the article. In addition, the provider education article shall be included in the contractor's next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.			X		

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A

"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Kelly Vontran, 410-786-0332 or kelly.vontran@cms.hhs.gov

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and

immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

ATTACHMENTS: 0

Medicare Benefit Policy Manual

Chapter 9 - Coverage of Hospice Services Under Hospital Insurance

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20.2 - Election, Revocation, and Discharge

(Rev.209, Issued: 05-08-15, Effective: 10-01-14, Implementation: 05-04-15)

20.2.1 – Hospice Election

(Rev.209, Issued: 05-08-15, Effective: 10-01-14, Implementation: 05-04-15)

Each hospice designs and prints its election statement. The election statement must include the following items of information:

Identification of the particular hospice that will provide care to the individual;

The individual's or representative's (as applicable) acknowledgment that the individual has been given a full understanding of hospice care, particularly the palliative rather than curative nature of treatment;

The individual's or representative's (as applicable) acknowledgment that the individual understands that certain Medicare services are waived by the election;

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. An individual may not designate an effective date that is retroactive;

The individual's designated attending physician (if any). Information identifying the attending physician recorded on the election statement should provide enough detail so that it is clear which physician or Nurse Practitioner (NP) was designated as the attending physician. This information should include, but is not limited to, the attending physician's full name, office address, NPI number, or any other detailed information to clearly identify the attending physician.

The individual's acknowledgment that the designated attending physician was the individual's or representative's choice.

The signature of the individual or representative.

An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

- (1) Remains in the care of a hospice;*
- (2) Does not revoke the election; and*
- (3) Is not discharged from the hospice.*

For Medicare payment purposes, an election for Medicare hospice care must be made on or after the date that the hospice provider is Medicare-certified. As with any election, the hospice must fulfill all other admission requirements, such as certification or recertification, any required face-to-face encounters, or Conditions of Participation (CoP) assessments. See also Pub. 100-04, Medicare Claims Processing Manual, chapter 11, section 20.1.1.

An individual may change, once in each election period, the designation of the particular hospice from which he or she elects to receive hospice care. The change of the designated hospice is not considered a revocation of the election, but is a transfer. To change the designation of hospice programs, the individual must file, with the hospice from which he or she has received care and with the newly designated hospice, a signed statement that includes the following information:

- the name of the hospice from which the individual has received care,
- the name of the hospice from which they plan to receive care, and
- the date the change is to be effective.

As described in Pub. 100-04, Medicare Claims Processing Manual, chapter 11, section 20.1.1, when a hospice patient transfers to a new hospice, the receiving hospice must file a new Notice of Election; however, the benefit period dates are unaffected. The receiving hospice must complete all assessments required by the hospice conditions of participation as described in 42 CFR 418.54. Because the benefit period does not change in a transfer situation, if the patient is in the third or later benefit period and transfers hospices, a face-to-face encounter is not required if the receiving hospice can verify that the originating hospice had the encounter.

A change of ownership of a hospice is not considered a change in the patient's designation of a hospice and requires no action on the patient's part.

Medicare beneficiaries enrolled in managed care plans may elect hospice benefits. Federal regulations require that the Medicare contractor assigned the hospice specialty workload maintain payment responsibility for hospice services and may pay for other claims if that contractor is the geographically assigned Medicare contractor for the managed care enrollees who elect hospice; for specifics, see regulations at 42 CFR 417, Subpart P, 417.585, Special Rules: Hospice Care (b), and 42 CFR 417.531 Hospice Care Services (b). Institutional claims for services not related to the terminal illness would otherwise be the responsibility of another geographically assigned Medicare contractor.

Managed care enrollees who have elected hospice may revoke hospice election at any time, but claims will continue to be paid by fee-for-service contractors as if the beneficiary were a fee-for-service beneficiary until the first day of the month following the month in which hospice was revoked. As specified above, by regulation, the duration of payment responsibility by fee-for-service contractors extends through the remainder of the month in which hospice is revoked by hospice beneficiaries.

See Pub. 100-04, Medicare Claims Processing Manual, Chapter 2, "Admission and Registration" and Chapter 11, "Processing Hospice Claims," for requirements for hospice reporting to the Medicare contractor.

20.2.1.1 - Hospice Notice of Election

(Rev.209, Issued: 05-08-15, Effective: 10-01-14, Implementation: 05-04-15)

Upon electing the Medicare hospice benefit, the beneficiary waives the right to Medicare payment for any Medicare services related to the terminal illness and related conditions (i.e., the patient's prognosis) during a hospice election, except when provided by, or under arrangement by, the designated hospice or individual's attending physician if he or she is not employed by the designated hospice (42 CFR 418.24 (d)). Prompt filing of the hospice Notice of Election (NOE) with the Medicare contractor is required to properly enforce this waiver and prevent inappropriate payments to non-hospice providers. The effective date of hospice election is the same as the hospice admission date.

Timely-filed hospice NOEs shall be filed within 5 calendar days after the hospice admission date. A timely-filed NOE is one that is submitted to and accepted by the Medicare contractor within 5 calendar days after the hospice election. The practical meaning of 'submitted to and accepted by the Medicare contractor' is that the NOE was not returned to the provider for correction.

Example: The date of hospice election is October 1st. A timely-filed NOE would be submitted and accepted by the Medicare contractor on or before October 6th.

In instances where a NOE is not timely-filed, Medicare shall not cover and pay for the days of hospice care from the hospice admission date to the date the NOE is submitted to, and accepted by, the Medicare contractor. These days shall be provider liable, and the provider shall not bill the beneficiary for them.

Example: The date of hospice election is October 1st. The NOE was not submitted and accepted by the Medicare contractor until October 10th. Provider liable days would be October 1st through October 9th.

There may be some circumstances that may be beyond the control of the hospice where it may not be possible to timely-file the NOE within 5 calendar days after the effective date of election or timely-file the Notice of Termination or Revocation (NOTR) (see section 20.2.4 - Hospice Notice of Termination or Revocation) within 5 calendar days after the effective date of a beneficiary's discharge or revocation. Therefore, the regulations do allow for exceptions. There are four circumstances that may qualify the hospice for an exception to the consequences of filing the NOE more than 5 calendar days after the effective date of election. These exceptional circumstances are as follows:

- 1. Fires, floods, earthquakes, or other unusual events that inflict extensive damage to the hospice's ability to operate;*
- 2. An event that produces a data filing problem due to a CMS or Medicare contractor systems issue that is beyond the control of the hospice;*
- 3. A newly Medicare-certified hospice that is notified of certification after the Medicare certification date, or is awaiting its user ID from its Medicare contractor; or,*
- 4. Other circumstances determined by CMS to be beyond the control of the hospice.*

If one of the four circumstances described above prevents a hospice from timely-filing its NOE, the hospice must document the circumstance to support a request for an exception, which would waive the consequences of filing the NOE late. Using that documentation, the hospice's Medicare contractor will determine if a circumstance encountered by a hospice qualifies for an exception to the consequences for filing an NOE more than 5 calendar days after the effective date of election. If the request for an exception is denied, the Medicare contractor will retain the decision of the denial. Hospices retain their usual appeal rights on the claim for payment.

See Pub. 100-04, Medicare Claims Processing Manual, Chapter 11, "Processing Hospice Claims" for requirements for NOE submission, reporting provider-liable days, and qualifying circumstances for a request for exception.

20.2.2 - Hospice Revocation

(Rev.209, Issued: 05-08-15, Effective: 10-01-14, Implementation: 05-04-15)

An individual or representative may revoke the election of hospice care at any time in writing; however a hospice cannot "revoke" a patient's election. To revoke the election of hospice care, the individual must file a document with the hospice that includes:

- A signed statement that the individual revokes the election for Medicare coverage of hospice care for the remainder of that election period, and*

The effective date of that revocation. An individual may not designate an effective date earlier than the date that the revocation is made.

Note that a verbal revocation of benefits is NOT acceptable. The individual forfeits hospice coverage for any remaining days in that election period.

Upon revoking the election of Medicare coverage of hospice care for a particular election period, the individual is no longer covered under the Medicare hospice benefit, and resumes Medicare coverage of the benefits waived when hospice care was elected. An individual may, at any time, elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.

20.2.3 - Hospice Discharge

Rev.209, Issued: 05-08-15, Effective: 10-01-14, Implementation: 05-04-15)

The hospice notifies the Medicare contractor of any discharge so that hospice services and billings are terminated as of that date. Upon discharge, the patient loses the remaining days in the benefit period. However, there is no increased cost to the beneficiary. General coverage under Medicare is reinstated at the time the patient revokes the benefit or is discharged.

Once a hospice chooses to admit a Medicare beneficiary, it may not automatically or routinely discharge the beneficiary at its discretion, even if the care promises to be costly or inconvenient, or the State allows for discharge under State requirements. The election of the hospice benefit is the beneficiary's choice rather than the hospice's choice, and the hospice cannot revoke the beneficiary's election. Neither should the hospice request or demand that the patient revoke his/her election.

Discharge from a hospice can occur as a result of one of the following:

- *The beneficiary decides to revoke the hospice benefit;*
- *The beneficiary transfers to another hospice;*
- *The beneficiary dies;*
- *The beneficiary moves out of the geographic area that the hospice defines in its policies as its service area. Some examples of moving out of the hospice's service area include, but are not limited to, when a hospice patient moves to another part of the country or when a hospice patient leaves the area for a vacation. Another example would be when a hospice patient is receiving treatment for a condition unrelated to the terminal illness or related conditions in a facility with which the hospice does not have a contract, and the hospice is unable to access the patient to provide hospice services. In this example, Medicare's expectation is that the hospice provider would consider the amount of time the patient is in that facility and the effect on the plan of care before making a determination that discharging the patient from the hospice is appropriate;*
- *The beneficiary's condition improves and he/she is no longer considered terminally ill. In this situation, the hospice will be unable to recertify the patient. The beneficiary can ask the Quality Improvement Organization (QIO) for an expedited review of the discharge (see Pub. 100-04, chapter 30, section 260 for more information); or*
- *Discharge for cause: There may be extraordinary circumstances in which a hospice would be unable to continue to provide hospice care to a patient. These situations would include issues where patient safety or hospice staff safety is compromised. When a hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause, that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient*

or the ability of the hospice to operate effectively is seriously impaired, the hospice can consider discharge for cause. The hospice must do the following before it seeks to discharge a patient for cause:

- Advise the patient that a discharge for cause is being considered;*
- Make a serious effort to resolve the problem(s) presented by the patient's behavior or situation;*
- Ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; and*
- Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into the patient's medical records.*

The hospice must notify the Medicare contractor and State Survey Agency of the circumstances surrounding the impending discharge. The hospice may also need to make referrals to other relevant state/community agencies (i.e., Adult Protective Services) as appropriate.

Discharge order: Prior to discharging a patient for any reason other than a patient revocation, transfer, or death, the hospice must obtain a written physician's discharge order from the hospice medical director. If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his or her review and decision included in the discharge note.

Effect of discharge: An individual, upon discharge from the hospice during a particular election period for reasons other than immediate transfer to another hospice—

- Is no longer covered under Medicare for hospice care;*
- Resumes Medicare coverage of the benefits waived; and*
- May at any time elect to receive hospice care if he or she is again eligible to receive the benefit.*

Discharge planning: The hospice must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill.

The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

Once a patient is no longer considered terminally ill with a life expectancy of 6 months or less if the disease runs its normal course, Medicare coverage and payment for hospice care should cease. Medicare does not expect that a discharge would be the result of a single moment that does not allow time for some post-discharge planning. Rather, it would be expected that the hospice's interdisciplinary group is following the patient, and if there are indications of improvement in the individual's condition such that hospice may soon no longer be appropriate, then planning should begin. If the patient seems to be stabilizing, and the disease progression has halted, then it could be the time to begin preparing the patient for alternative care. Discharge planning should be a process, and planning should begin before the date of discharge.

In some cases, the hospice must provide Advanced Beneficiary Notification (ABN) or a Notice of Medicare Non-Coverage (NOMNC) to patients who are being discharged. See Pub. 100-04, Medicare Claims Processing Manual, Chapter 30 "Financial Liability Protections", Section 50.15.3.1, for information on these requirements.

20.2.4 - Hospice Notice of Termination or Revocation

(Rev.209, Issued: 05-08-15, Effective: 10-01-14, Implementation: 05-04-15)

Upon discharge or revocation of hospice care, the beneficiary immediately resumes the Medicare coverage that had previously been waived by the hospice election. As such, hospices should record the beneficiary's discharge or revocation in the claims processing system promptly.

If a hospice beneficiary is discharged alive or if a hospice beneficiary revokes the election of hospice care, the hospice shall submit a timely-filed Notice of Termination/Revocation (NOTR) unless the hospice has already filed a final claim. A timely-filed NOTR is a NOTR that is submitted to and accepted by the Medicare contractor within 5 calendar days after the effective date of discharge or revocation. Hospices continue to have 12 months from the date of service in which to file their claims.

See Pub. 100-04, Medicare Claims Processing Manual, Chapter 11, "Processing Hospice Claims" for requirements for NOTR submission.

40.1.3.1 - Attending Physician Services

Rev.209, Issued: 05-08-15, Effective: 10-01-14, Implementation: 05-04-15)

The attending physician is a doctor of medicine or osteopathy or a nurse practitioner and is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

The election statement must include the patient's choice of attending physician. The information identifying the attending physician should be recorded on the election statement in enough detail so that it is clear which physician or NP was designated as the attending physician. This information should include, but is not limited to, the attending physician's full name, office address, NPI number, or any other detailed information to clearly identify the attending physician. Hospices have the flexibility to include this information on their election statement in whatever format works best for them, provided the content requirements in 42 CFR 418.24(b) are met. The language on the election form should include an acknowledgement by the patient (or representative) that the designated attending physician was the patient's (or representative's) choice.

If a patient (or representative) wants to change his or her designated attending physician, he or she must follow a procedure similar to that which currently exists for changing the designated hospice. Specifically, the patient (or representative) must file a signed statement with the hospice that identifies the new attending physician in enough detail so that it is clear which physician or NP was designated as the new attending physician. This information should include, but is not limited to, the attending physician's full name, office address, NPI number, or any other detailed information to clearly identify the attending physician. The statement must include the date the change is to be effective, the date that the statement is signed, and the patient's (or representative's) signature, along with an acknowledgement that this change in the attending physician is the patient's (or representative's) choice. The effective date of the change in attending physician cannot be earlier than the date the statement is signed.