

Hospice Federal Blanket Waivers Updates as of May 10, 2020 in Red

The following information is based on CMS “Blanket” Waivers effective retrospectively to March 1, 2020 and that end no later than when the COVID 19 PHE (Public Health Emergency) ends. “Blanket” Federal Waivers apply to all hospices, in addition to waivers granted to individual companies, or State waivers that apply to Medicaid patients.

The CMS regulatory language referenced in these waivers follows each statement for clarity as to the scope of the waiver. Links to federal documents are also included.

Telehealth • May 4, 2020 Modified to Include Telecommunications and Clarified

- Hospices can provide services to a Medicare patient receiving routine home care using **telecommunications technology (e.g., remote patient monitoring; telephone calls (audio only and TTY); and 2-way audio-video technology)**, if it is feasible and appropriate to do so. The choice of the type of visit is a matter of professional practice and when a telephone call, live telehealth, or in-person visit is most appropriate to meet the patient’s/family’s needs.
- Telecommunication visits should be documented as any other type of visit, noting the type of the visit-i.e. how it was conducted – in person, via telehealth, or telephone.
- **Face-to-face encounters for purposes of patient recertification for the Medicare hospice benefit can be conducted via telehealth (i.e., 2-way audio-video telecommunications technology that allows for real-time interaction between the hospice physician/hospice nurse practitioner and the patient).**
- **May 4, 2020: Only in-person visits - *with the exception of social work telephone calls* – can be reported on the hospice claim submitted to Medicare for payment.**
- For the purpose of service-intensity add-on (SIA) payments, only in-person visits performed by registered nurses and social workers provided during routine home care during the last seven days of life are eligible for these add-on payments.
 - NOTE: SIA payments are made above and beyond the routine home care per diem payment amount.
- Hospices can report the costs of telecommunications technology used to furnish services under the routine home care level of care during the PHE for the COVID-19 pandemic as “other patient care services” on the cost report using Worksheet A, cost center line 46, or a subscript of line 46 through 46.19, cost center code 4600 through 4619, and identify this cost center as “PHE for COVID-19” (p.49 of the billing waiver document in this link)

<https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf>

Hospice Comprehensive Assessment and Updates Timeframes Extended:

- Hospices continue to complete the required comprehensive assessments and updates, the timeframes for updating the assessment may be extended from 15 to 21 days.

42 CFR §418.54(d): The update of the comprehensive assessment by the hospice interdisciplinary group (in collaboration with the individual's attending physician, if any). The assessment update must be accomplished as frequently as the condition of the patient requires, but no less frequently than every 15 days

Hospice Aides: On Site 14 Day Hospice Aide Supervision Visit is Waived

- CMS is waiving the requirements at 42 CFR 418.76(h), that requires a nurse to conduct an onsite visit every two weeks and includes waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan, as this may not be physically possible for a period of time.

42 CFR 418.76(h) *Standard: Supervision of hospice aides.* (1) A registered nurse must make an on-site visit to the patient's home.

Hospice Aides: Pseudo-Patients May Be Used in Hospice Aide Competency:

- During the PHE, hospices may utilize pseudo patients - such as a person in a role-play situation or a computer-based mannequin device - to test the competency of hospice aides in those tasks that currently must be observed being performed on an actual patient.

42 C.F.R. 418.76(c)(1): *Standard: Competency Evaluation.* An individual may furnish hospice aide services on behalf of a hospice only after that individual has successfully completed a competency evaluation program as described in this section.

The competency evaluation must address each of the subjects listed in paragraph (b)(3) of this section. Subject areas specified under paragraphs (b)(3)(i), (b)(3)(iii), (b)(3)(ix), (b)(3)(x) and (b)(3)(xi) of this section must be evaluated by observing an aide's performance of the task with a patient. The remaining subject areas may be evaluated through written examination, oral examination, or after observation of a hospice aide with a patient.

Hospice Aides: May 4, 2020 Annual Training and Assessment of Hospice Aides *Postponed*:

- The annual onsite visit (direct observation) of each aide by a registered nurse is *postponed*.
- NOTE: All postponed onsite assessments must be completed by these professionals no later than 60 days after the expiration of the PHE.

§418.76(h)(2) A registered nurse must make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.

Hospice Aides: 12-hour Annual In-Service Training Requirement for Hospice Aides Waived.

- CMS has waived the hospice requirement that each hospice aide receives 12 hours of in-service training in a 12-month period.

42 C.F.R. 418.76(d). Standard: In-service training. A hospice aide must receive at least 12 hours of in-service training during each 12-month period. In-service training may occur while an aide is furnishing care to a patient.

Hospice Volunteers:

- Waiving the requirement at 42 CFR §418.78(e) that hospices are required to use volunteers (including at least 5% of patient care hours). It is anticipated that hospice volunteer availability and use will be reduced related to COVID-19 surge and anticipated quarantine. •

42 CFR §418.78(e): Volunteers must provide day-to-day administrative and/or direct patient care services in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff. The hospice must maintain records on the use of volunteers for patient care and administrative services, including the type of services and time worked.

Hospice Therapies

- Waiving the requirement for hospices to provide non-core hospice services during the PHE, including the requirements at 42 CFR §418.72 for physical therapy, occupational therapy, and speech-language pathology. •

42 CFR §418.72: Physical therapy services, occupational therapy services, and speech-language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

May 4, 2020: Annual Assessment *Postponed*

- CMS is postponing the deadline for the requirement that hospices annually assess the skills and competence of all individuals furnishing care until the end of the first full quarter after the declaration of the PHE concludes.
 - This does not change the minimum personnel qualifications (42 CFR §418.114).
 - Hospice staff must complete training and have their competency evaluated in accordance with unwaived provisions of the benefit.

42 CFR §418.100(g)(3): A hospice must assess the skills and competence of all individuals furnishing care, including volunteers furnishing services, and, as necessary, provide in-service training and education programs where required. The hospice must have written policies and procedures describing its method(s) of assessment of competency and maintain a written description of the in-service training provided during the previous 12 months.

May 4, 2020: QAPI: Narrowing the Scope

- The QAPI program's scope is narrowed to concentrate on infection control issues, while retaining the requirement to focus on adverse events during the PHE period.
- Goal is to focus efforts on aspects of care delivery most closely associated with COVID-19.
- The requirement that HHAs maintain an effective, ongoing, agency-wide, data driven quality assessment and performance improvement program remains.

§418.58(a)–(d) QAPI Program Activities: a) Program Scope; b) Program data; c) Program Activities; d) Measure program improvement.

Hospice Inpatient Life Safety Code Waivers (May 11, 2020)

CMS is waiving certain physical environment requirements for inpatient hospices to reduce disruption of patient care and potential exposure/transmission of COVID-19.

CMS will permit facilities to adjust scheduled inspection, testing and maintenance (ITM) frequencies and activities for facility and medical equipment. Specific Waivers:

- CMS is temporarily modifying the requirements at §418.110(c)(2)(iv) to permit the adjustment of scheduled (ITM) frequencies and activities for facility and medical equipment.

§418.110(c)(2)(iv) – the hospice must develop procedures for controlling the reliability and quality of the scheduled and emergency maintenance and repair of all equipment

- CMS is modifying provisions at §482.41(b)(1)(i) and (e) to the extent necessary to permit the hospice to adjust scheduled ITM frequencies and activities required by LSC and HCFC. **The following** are considered critical and **are not included in the waiver**:
 - Sprinkler system monthly electric motor-driven and weekly diesel engine-driven fire pump testing.
 - Portable fire extinguisher monthly inspection.
 - Elevators with firefighters' emergency operations monthly testing.
 - Emergency generator 30 continuous minute monthly testing and associated transfer switch monthly testing.
 - Means of egress daily inspection in areas that have undergone construction, repair, alterations, or additions to ensure its ability to be used instantly in case of emergency.
- CMS will permit a waiver of §418.110(d)(6) which requires the inpatient hospice to have an outside window or outside door in every sleeping room. These requirements will be waived to permit the utilization facility and non-facility space that is not normally used for patient care or quarantine.
- **Alcohol- Based hand rub dispensers**: CMS is modifying waivers under §418.110(d) in relation to the placement of Alcohol-based hand rub (ABHR) dispensers for use by staff and others due to the need for the increased use of ABHR in infection control. However, ABHRs contain ethyl alcohol, which is considered a flammable liquid, and there are restrictions on the storage and location of the containers. This includes restricting access by certain patient/resident population to prevent accidental ingestion. Due to the increased fire risk for bulk containers (over five gallons) those will still need to be stored in a protected hazardous materials area.
 - Facilities should continue to protect ABHR dispensers against inappropriate use as required by §418.110 (d)(4) - A hospice may place alcohol-based hand rub dispensers in its facility if the dispensers are installed in a manner that adequately protects against access by vulnerable populations.

- **Fire Drills:** Due to the inadvisability of quarterly fire drills that move and mass staff together, we will instead permit a documented orientation training program related to the current fire plan, which considers current facility conditions. The training will instruct employees including existing, new or temporary employees, on their current duties, life safety procedures and the fire protections devices in their assigned area.
- **Temporary Construction:** CMS is waiving requirements that would otherwise not permit temporary walls and barriers between patients.

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf> pages 25-27. (May 11, 2020)

Delaying Cost 2019 Reports:

- For the following fiscal year end (FYE) dates are extended:
 - FYE 10/31/2019 cost reports due by March 31, 2020, now due June 30, 2020
 - FYE 11/30/2019 cost reports due by April 30, 2020 now due June 30, 2020
 - FYE 12/31/2019 cost reports due by May 31, 2020 now due July 31, 2020.

Accelerated/Advanced Payment:

May 4, 2020: As of April 26, 2020, CMS is reevaluating all pending and new applications for the Accelerated Payment Program and has suspended the Advance Payment Program, considering direct payments made available through the Department of Health & Human Services' (HHS) Provider Relief Fund.

- Distributions made through the Provider Relief Fund do not need to be repaid.
- For providers and suppliers who have received accelerated or advance payments related to the COVID-19 Public Health Emergency, CMS will not pursue recovery of these payments until 120 days after the date of payment issuance.
- Providers and suppliers with questions regarding the repayment of their accelerated or advance payment(s) should contact their appropriate Medicare Administrative Contractor (MAC).

Medical Claims Review

- CMS has suspended the following medical reviews for the duration of the PHE:
 - most Medicare Fee-For-Service (FFS) medical review during the emergency period (MACs) under the Targeted Probe and Educate program –
 - any reviews in process will be suspended and claims released and paid.
 - post-payment reviews conducted by the MACs, Supplemental Medical Review Contractor (SMRC) reviews and Recovery Audit Contractor (RAC)
 - Reviews are suspended and released
 - Additional Documentation Requests (ADRs) will not be sent during the PHE pause,
 - ADRs issued before the PHE pause will be released and processed as normal.
- CMS may conduct medical reviews during or after the PHE if there is an indication of potential fraud.
<https://www.cms.gov/files/document/provider-burden-relief-fags.pdf>

Appeals - Medicare Advantage (MA) and Medicare Fee-for-Service (FFS) and Part D:

- May 4, 2020: Medicare Administrative Contractors (MACs) and Qualified Independent Contractors (QICs) in the FFS program 42 CFR 405.942 and 42 CFR 405.962 and MA and Part D plans, as well as the Part C and Part D Independent Review Entity (IREs), 42 CFR 562, 42 CFR 423.562, 42 CFR 422.582 and 42 CFR 423.582 can allow extensions to file an appeal.
- May 4, 2020: CMS is allowing MACs and QICs in the FFS program 42 CFR 405.950 and 42 CFR 405.966 and the Part C and Part D IREs to waive requirements for timeliness for requests for additional information to adjudicate appeals or the extension is justified due to extraordinary, exigent or other non-routine circumstances and is in the enrollee's interest 42 CFR § 422.568(b)(1)(i); § 422.572(b)(1) and § 422.590(f)(1).
- May 4, 2020; May MA plans may extend the timeframe to adjudicate organization determinations and reconsiderations for medical items and services (but not Part B drugs) by up to 14 calendar days if: 1) the enrollee requests the extension; 2) the extension is justified and in the enrollee's interest due to the need for additional medical evidence from a noncontract provider that may change an MA organization's decision to deny an item or service or, 3) the extension is justified due to extraordinary, exigent, or other non-routine circumstances and is in the enrollee's interest 42 CFR § 422.568(b)(1)(i), § 422.572(b)(1) and § 422.590(f)(1).
- May 4, 2020: MACs and QICs in the FFS program 42 C.F.R 405.910 and MA and Part D plans, as well as the Part C and Part D IREs can process an appeal even with incomplete Appointment of Representation forms 42 CFR § 422.561, 42 CFR § 423.560. However, any communications will only be sent to the beneficiary.
- May 4, 2020: MACs and QICs in the FFS program 42 CFR 405.950 and 42 CFR 405.966, and MA and Part D plans, as well as the Part C and Part D IREs can process requests for appeal that don't meet the required elements using information that is available. 42 CFR 422.562, 42 CFR 423.562.
- May 4, 2020: MACs and QICs in the FFS program 42 CFR 405.950 and 42 CFR 405.966, and MA and Part D plans, as well as the Part C and Part D IREs, 42 CFR 422.562, 42 CFR 423.562 can utilize all flexibilities available in the appeal process as if good cause requirements are satisfied.

Hospice Waiver Statement: <https://www.cms.gov/files/document/covid-hospices.pdf>