



## **CMS Finalizes FY2021 Hospice Wage Index, Payment Rates and Election Statement/Addendum Requirements**

On Friday, July 31, 2020, the Centers for Medicare & Medicaid Services (CMS) issues its [final FY2021 hospice payment rule](#) containing updates for the applicable wage index, payment rates (with a 2.4 percentage update), and cap amount. The rule incorporates, as part of the FY2021 wage index, recent Office of Management and Budget statistical area delineations, with a 5 percent cap on wage index decreases for a one-year transitional period. The rule does not finalize plans to sunset the Service Intensity Add-on (SIA) budget neutrality factor. Finally, the rule imposes, as proposed, requirements for modifications to the hospice election statement and that hospices offer an Election Statement Addendum containing information about diagnoses, services and treatments that will not be covered by the hospice as they are deemed “unrelated” to the principal diagnosis and any related conditions (the Patient Notification of Hospice Non-Covered Items, Services, and Drugs). These changes were proposed during the FY2020 rule cycle to become effective October 1, 2020. CMS also offers a model election statement and sample addendum for use in fulfilling the new Election Statement/Addendum responsibilities. The overall impact of the rule is an estimated \$540 million in increased hospice payments.

Based on an initial review, National Association for Home Care & Hospice (NAHC) President Bill Dombi commented, “The final hospice payment rule is within expectations as it relates to payment rates. The reduction in the Market Basket Index may reflect updated data, but it is important to note that hospice costs are actually now higher, particularly given the COVID-19 virus, especially with the need for costly Personal Protective Equipment. This may be a flaw in the methodology of the inflation index, but we hope that HHS can provide relief through the Provider Relief Fund.” Dombi stated further, “We are also disappointed that CMS did not extend the effective date on the required Addendum as the pressures of the pandemic have only increased and show no real signs of abating in the near term. This requirement will certainly necessitate a shift of clinicians from patient care to paperwork.”

The following link contains access to wage index tables, the sample election statement and addendum form, and a link to the final rule: <https://www.cms.gov/medicare/medicare-fee-service-payment/hospice/hospice-regulations-and-notice/cms-1733-f>

## **Hospice Wage Index Changes**

As discussed in the proposed FY2021 hospice payment rule, during 2018 and in early 2020 the Office of Management and Budget (OMB) published revisions to the delineations of Metropolitan Statistical Areas (MSAs), Micropolitan Statistical Areas, and Combined Statistical Areas, and guidance on uses of the delineations in these areas. It was CMS' determination that hospices and other Medicare providers should be subject to the most recently available delineations. As part of the proposed FY2021 rule and proposed wage index values, CMS incorporated only the 2018 changes, as the 2020 changes were issued too late to be included. To blunt the severity of any negative impact from the changes on providers in affected areas, CMS proposed to limit any drop in wage index value between FY2020 and FY2021 to 5 percent. This is a transitional value and will only be applied in FY2021.

**As part of the final rule, CMS is finalizing the proposal to adopt the revised OMB delineations from the September 14, 2018 OMB Bulletin 18-04 and apply a one-year 5 percent cap on wage index decreases as proposed**, meaning the counties impacted will receive a 5 percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior fiscal year for FY 2021 effective October 1, 2020. CMS will consider the 2020 changes to the delineations, if necessary, as part of future rulemaking.

The final wage index applicable to FY 2021 can be found on the CMS website at:

<https://www.cms.gov/medicare/medicare-fee-service-payment/hospice/hospice-wage-index/fy-2021-final-hospice-wage-index>. The final hospice wage index for FY 2021 is effective October 1, 2020 through September 30, 2021. The wage index file also provides a crosswalk between the FY 2021 wage index using the current OMB delineations and the FY 2021 wage index using the revised OMB delineations that will be in effect in FY 2021. This file shows each state and county and its corresponding wage index along with the previous CBSA number, the new CBSA number or alternate identification number, and the new CBSA name.

## **Wage Index and Payment Update**

**FY2021 Hospice Wage Index:** The FY2021 rule uses the FY2021 pre-floor, pre-reclassified hospital wage index, with a 5 percent cap on wage index decreases (as referenced above). The wage index value is applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving routine home care (RHC) or continuous home care (CHC). The wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving general inpatient care (GIP) or inpatient respite care (IRC).

The labor portion of the hospice payment rates are as follows: For RHC, 68.71 percent; for CHC, 68.71 percent; for GIP, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore, the non-labor portion of the payment rates are as follows: For RHC, 31.29 percent; for CHC, 31.29 percent; for GIP, 35.99 percent; and for Respite Care, 45.87 percent.

**Proposed FY2021 Payment Update Percentage:** The hospice payment update is based on the inpatient hospital market basket percentage increase, which in the proposed rule was estimated at 3.0 percent, less an Affordable Care Act-mandated productivity adjustment initially estimated at 0.4 percentage point. However, the updated hospital market basket value based on more recent data is estimated at 2.4 percent. Additionally, given current financial uncertainties, CMS has estimated a new productivity adjustment of MINUS 0.1 percent. However, since statute requires that the market basket update be reduce (not increase) the market basket by the productivity adjustment. As a result, **CMS is setting the FY2021 hospice payment update at 2.4 percent and will adjust the payment rates accordingly.** The estimated base payment rates are outlined below. **It should be noted that, while the hospital market basket update estimate dropped significantly between the proposed and final rules (due to anticipated slower compensation growth as the result of the economic downturn that began in February 2020), the finalized hospice payment rates do not differ significantly from those that were proposed, due to inclusion of the SIA budget neutrality factor and a higher wage index standardization factor than had been laid out in the proposed rule.**

Description	FY2020 Payment Rate	SIA Budget Neutrality Factor	Wage Index Standardization Factor	FY2021 Hospice Payment Update	FY2021 Payment Rates
Routine Home Care (days 1-60)	\$194.50	1.0002	1.0002	X 1.024	\$199.25
Routine Home Care (days 61+)	\$153.72	1.0001	1.0004	X 1.024	\$157.49
Continuous Home Care (24 hours)	\$1,395.63	N/A	1.0023	X 1.024	\$1,432.41 (\$59.68/hourly rate)
Inpatient Respite Care	\$450.10	N/A	1.0004	X 1.024	\$461.09
General Inpatient Care	\$1,021.25	N/A	0.9999	X 1.024	\$1,045.66

**Please note:** payment rates for hospice providers NOT complying with the hospice quality reporting requirements will be 2 percentage points lower than the values referenced in the above table. Additionally, hospice Medicaid rates are based on the final Medicare rates, and will be published in the coming weeks. Stay tuned to *NAHC Report* for those values.

**Service-Intensity Adjustment (SIA) Issues:** Hospice providers are reminded that the hourly rate for Continuous Home Care (calculated to be \$59.68 for FY2021) is utilized for the service-intensity adjustment (SIA) payments, which are provided to hospices for up to four hours per day in the final seven days of life for RN or social work visits provided to patients on routine home care (RHC).

When the SIA was instituted, CMS included a budget neutrality factor designed to reduce the overall RHC rate to ensure that SIA payments have a budget neutral impact on overall spending. CMS has analyzed the SIA budget neutrality factors calculated for FYs 2016 through 2020 and determined that the utilization of the SIA from one year to the next has remained relatively constant. Based on this general stability, CMS had proposed earlier this year to eliminate the SIA budget neutrality factor to simplify the payment update calculation, and sought input on the proposal. **Based on input from commenters, which noted recent changes in payment for Continuous Home Care that could incentivize greater use of the SIA going forward, CMS has decided NOT to eliminate the SIA budget neutrality factor at this time.**

**Hospice Aggregate Cap:** CMS is finalizing an Aggregate Cap value for FY2021 of \$30,683.93 (the FY2020 value of \$29,964.78 multiplied by 2.4 percent).

### **Election Statement Modifications and Election Statement Addendum**

In the FY 2020 Hospice final rule CMS finalized modifications to the hospice election statement content and set forth requirements for a hospice election statement addendum. CMS did not propose any changes to the policies finalized in the FY 2020 Hospice final rule regarding the election statement content modifications or the requirements for the election statement addendum. NAHC and other hospice stakeholders did request in comments submitted on the proposed rule that CMS delay the implementation of these changes for two reasons – (1) lack of guidance and clarity needed on the changes and (2) the impact of the current Public Health Emergency (PHE) on hospices. CMS did not implement the requested delay. **The election statement modifications and the election statement addendum requirements will be effective for hospice elections beginning on and after October 1, 2020 and the previously finalized policy that the signed addendum (and any signed updates) would be a new condition for payment will also be effective at that time.** CMS indicated in this final rule that it originally delayed the effective date of the election statement content modifications and the hospice election statement addendum until FY 2021 to allow hospices adequate time to make the necessary modifications to their current election statements, develop their own election statement addendum, and make any changes to their current software and business processes to accommodate the requirements. The hospice industry had many questions about the changes to which there was no additional guidance received until the FY2021 proposed rule was released with a sample election statement and election statement addendum from CMS – five months and a few days prior to the implementation date. Some of the questions submitted via comments were addressed by CMS in the final rule and are summarized in this article.

CMS provided a [model modified election statement](#) and [election statement addendum](#). Hospices can develop their election statement and election statement addendum in any format that best suits their needs as long as the content requirements at § 418.24(b) and (c) are met. Many Electronic Medical Record (EMR) vendors have or will develop documents for use by their clients, if they desire.

Some of the outstanding questions/issues CMS addressed in this final rule are below.

**CMS Response to Comments Submitted on the Modified Election Statement and Election Statement Addendum**

<p>Can the election statement and addendum be provided electronically?</p>	<p>As long as the content requirements at § 418.24(b) and (c) are met, there is nothing precluding a hospice from having an election statement and addendum in an electronic format.</p> <p>While we envisioned a hard copy document for ease of use and sharing with non-hospice providers, we note that we did not explicitly prohibit the use of an electronic patient portal or provision of the addendum as an electronic version, as we recognize information can be provided in a written, electronic format.</p> <p>If the beneficiary (or representative) receives the addendum in an electronic format but requests to have a hard copy version for their records, we expect that the hospice would accommodate such request</p>
<p>How should a hospice handle a situation where the patient/beneficiary refuses to sign the election statement addendum?</p>	<p>We again point to the statement that must be included on the addendum that the signature is only acknowledgement of receipt and not a tacit agreement to its contents. Additionally, if the beneficiary (or representative) requests the addendum, we believe that hospices would conduct due diligence that the beneficiary (or representative) has been informed about the purpose of the addendum and the rationale for the signature. However, we recognize that there may be those rare instances in which the beneficiary (or representative) may refuse to sign the addendum, even though he or she has requested the form. While we believe that this would be a rare occurrence given this is primarily a beneficiary (or representative) request to receive such form, we will consider whether this issue needs to be addressed in future rulemaking.</p>
<p>Is there a timeframe for when the beneficiary/representative has to sign the addendum?</p>	<p>Because the beneficiary signature is an acknowledgement of receipt of the addendum, this means that the beneficiary would sign the addendum when the hospice provides it, in writing, to the beneficiary (or representative).</p>
<p>What are the implications on the addendum when a patient transfers to another hospice?</p>	<p>A transfer does not change the effective date of hospice election. That means, if the beneficiary (or representative) requests the addendum from the receiving hospice, the hospice would have 72 hours (or 3 days) to furnish this information in</p>

	<p>writing.</p> <p>Hospices have the option to make updates to the addendum, if necessary, to include such conditions, items, services and drugs they determine to be unrelated throughout the course of a hospice election. This could also include updating the addendum in situations where a condition, item, service or drug was previously considered unrelated, and therefore included on the addendum, is now considered related, and therefore would be covered by the hospice and removed from the addendum.</p>
<p>Does the hospice have to provide the addendum when the beneficiary/representative requests the addendum but the hospice has determined that there are no unrelated items, services or drugs? If the hospice must provide the addendum in these situations, what should be included on the addendum?</p>	<p>The hospice could explain to the beneficiary (or representative) that it is furnishing all care or the hospice can provide the addendum noting that at the time of the request, the hospice has determined that there were no unrelated conditions, items, services, and drugs.</p>
<p>What are CMS' expectations around how updates to the addendum should be identified - should the updated items be differentiated in some way, i.e. asterisk/different color text, listed separately, etc.?</p>	<p>Hospices are free to develop any process for addendum updates to distinguish whether any updates are additions, deletions, or modifications, similar to processes hospices have in place for updates to the hospice plan of care</p>
<p>When the addendum is requested after the date of election but within the five day timeframe after election must the hospice provide the addendum within 72 hours (three days)?</p>	<p>Yes. If the beneficiary does not request the addendum on the effective date of the election (that is, the start of care date), but within the 5-day timeframe after the effective date, the hospice would have 72 hours (or 3 days) from the date of the request to furnish the addendum as the regulations are clear that the 5-day timeframe relates to whether the beneficiary (or representative) requested the addendum on the effective date of the election (that is, the start date of hospice care).</p>
<p>When does the five-day timeframe begin in situations where the patient elects hospice care with a future date, on the date the election statement is signed or the effective date of the election?</p>	<p>The addendum would be furnished to the beneficiary (or representative) within 5 days of the effective date of the election. For example, if the beneficiary elects hospice on May 1<sup>st</sup> with an effective date of May 7<sup>th</sup>, the addendum, if requested, would be provided within 5 days of May 7<sup>th</sup></p>
<p>It would be helpful for CMS to provide an example of a completed addendum so hospices could see</p>	<p>We do not believe that providing an example of a completed addendum would be particularly</p>

<p>how/what CMS expects to be written for a rationale explaining why an item, service, or drug is considered unrelated.</p>	<p>helpful because of the unique clinical conditions of hospice beneficiaries and given that determinations regarding what is related versus unrelated to a patient's terminal illness and related conditions are made on a case-by-case basis.</p>
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It should be noted that the patient/representative, non-hospice provider or Medicare contractor can request the election statement addendum. The condition of payment is met only in those instances where the beneficiary/representative has requested the addendum. If the patient/representative does not request the addendum, but it is requested by a non-hospice provider or Medicare contractor, the hospice can determine the best processes for documenting this.

CMS acknowledged, as NAHC pointed out in its comments on the proposed rule, that it is important that hospices not conflate the election statement addendum and the CMS Advance Beneficiary Notice (ABN). The purposes of the two are different and are handled differently. Below is a table from the final rule

that lays out the differences between the two and the proper use of each.

**TABLE 9: Differences between the Advance Beneficiary Notice (ABN) and the Hospice Election Statement Addendum**

Type of Document	Purpose of Document	Timing to Provide to Beneficiary	When it is Used by Hospices
Advance Beneficiary Notice (ABN)	To transfer potential financial liability to the Medicare beneficiary in certain instances.	Prior to delivery of the item or service in question. The hospice must provide enough time for the beneficiary to make an informed decision on whether or not to receive the service or item in question and accept potential financial liability	<p>If there is an item or service that is usually paid for by Medicare Part A but may not be paid for in this particular case because it is not considered medically reasonable and necessary.</p> <p>If a patient is not terminally ill</p> <p>If the level of hospice care is determined to be not reasonable or medically necessary.</p>
Hospice Election Statement Addendum	To inform the beneficiary (or representative) upon request, of any items, services, or drugs the hospice will not be providing because the hospice has determined them to be unrelated to the terminal illness and related conditions.	<p>If the addendum is requested at the time of hospice election, the hospice has 5 days from the effective date of the election to furnish this information in writing.</p> <p>If the addendum is requested during the course of hospice care (that is, after the effective date of the election), the hospice has 72 hours (or 3 days) from the date of the request to furnish this information in writing.</p>	<p>Upon beneficiary request, if the hospice has determined that certain items, services, and drugs are unrelated to the terminal illness and related conditions and not covered by hospice.</p> <p>However, these items, services, and drugs may be covered under other Medicare benefits if coverage and eligibility requirements are met.</p>

CMS noted that the finalized policies relating to the election statement modifications and the addendum are for beneficiaries receiving services under the Medicare hospice benefit. While the addendum is not required to be provided to non-Medicare patients, hospices can choose to do so.

One of the major concerns of NAHC and other stakeholders is the apparent lack of education by CMS to MACs (medical review) and BFCC-QIOs (Immediate Advocacy process) related to the modified election statement and election statement addendum. CMS stated in this final rule that it continues to have ongoing discussions with the MACs and BFCC-QIOs and will continue to provide education throughout the upcoming months leading up to the effective date of this policy. This will include the release of sub-regulatory guidance, and MLN® articles to ensure education is furnished to all relevant stakeholders. There is a mere 62 days until October 1, 2020. CMS has provided some additional information in this final rule which will help hospices in their preparation and NAHC will be providing additional education in the very near future as well as watching for additional guidance from CMS. Stay tuned to NAHC Report for more information.

