The Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: CMS Desk Officer, [1420 – F]
August 6, 2009

I am writing about **Section B. Change to the Physician Certification and Recertification Process, 418.22** on pages 82—83 of the CMS Hospice Wage Index for Fiscal Year 2010 Final Rule [Filed 07/30/09 at 4:15 pm; Publication Date: 8/6/2009].

I am writing to strongly object to the new requirement from CMS to include a narrative explanation from the medical director or attending physician of the clinical findings that support a life expectancy of six months or less on the certification statement. I believe that this is a burdensome and unnecessary requirement, one that will be costly to implement, and will be a barrier to admitting patients in a timely fashion.

CMS estimates that it will only take 5 minutes per admission for the physician to write this statement, because the physician will have already reviewed the record to determine if the patient is appropriate for admission. For Hospice of Cincinnati, with an estimated 5900 admissions per year, the cost of implementing this regulation will be approximately $46,000/year. This is the amount of money we had budgeted to bring on a part-time medical director this year, which we will now be unable to do.

To make matters worse, CMS states that check boxes or standard language must not be used when writing the narratives. In an era when most communication is becoming computerized, this would seem to indicate a giant step backwards. Hospice of Cincinnati already employs 1.4 FTE's to ensure that our certification process is complete, accurate and timely. CMS is obviously unaware of the amount of coordination that is necessary for complex programs who have multiple inpatient units and numerous home care teams, and who utilize part time physicians who are juggling their own practices along with the needs of the hospice program. When our physicians have a full waiting room in their own office, writing a paragraph that simply regurgitates the information they have already reviewed and agreed with, will not be a priority and our hospice admission will be delayed until they have a break in their office. Frankly, HOC's median length of stay is between 9-10 days, so to postpone a patient's admission by even one day is both unfair to the patient and costly to our program.

The document filed by CMS included comments received in response to the proposed changes, however, I have contacted multiple hospice directors throughout Ohio and none of us knew that MedPAC's recommendation was being proposed for implementation. I strongly urge CMS to consider a delay in the implementation, if not a total revocation of this requirement entirely.

It is apparent that CMS believes that some hospices are admitting patients inappropriately. If that is the case, those individual hospices need further scrutiny. Punishing the majority of hospices who are bending over backwards to comply with the continued increase in regulatory requirements is unfair, and could possibly delay admission of completely appropriate hospice patients, denying them access to a program to which they are entitled.

Sincerely,

Leigh Gerdsen
Chief Quality Officer

CMS Response:

CMS proposed a change to the physician certification and recertification process in its April 24, 2009 Hospice Wage Index for Fiscal Year 2010 proposed rule (CMS-1420-P), specifically to require that physicians that certify or recertify hospice patients as being terminally ill include a brief narrative explanation, as part of that certification or recertification, of the clinical findings that support a life expectancy of 6 months or less. This rule generated over 700 comments from the public. Many commenters supported this proposed policy, viewing such a requirement as a way to ensure more physician involvement with the patient and increase engagement in the certification of terminal illness.

We do not believe that requiring a physician narrative will delay admission to hospice. The narrative is a part of the certification of terminal illness, and therefore must follow all the timeframes given for the certification. As described in our regulations at 42 CFR 418.22(a)(3), if written certification (including the narrative) cannot be provided within 2 calendar days, hospices are allowed to obtain verbal certification within 2 calendar days. They must have written certification (including the narrative) before submitting a claim. Therefore we do not believe that the timing of the narrative creates any barrier to admission.

We do not believe that such a requirement is simply a physician's regurgitation of the facts. Rather, as we stated in the proposed rule, and again in the August 6, 2009 Hospice Wage Index final rule (CMS-1420-F), we believe that the physician must synthesize the patient's comprehensive medical information in order to compose the brief clinical justification narrative, which we believe will increase physician accountability associated with the terminal prognosis. This synthesis should set out the physician's rationale as to how the facts justify the prognosis, and not simply be a restatement of the medical record facts. As such, we estimate that it will take physician approximately 5 minutes per certification or recertification. The intent is for the physician to justify his or her prognosis, rather than simply sign a form.

Because the physician has always been required to perform the review needed to make a terminal illness, we disagree that the corresponding short narrative which describes the physician's clinical justification associated with the prognosis is overly burdensome, or will create a barrier to admitting patients. We do understand that many physicians prefer to dictate rather than hand-write their clinical findings. We agree with commenters on the proposed rule who stated that some electronic health record systems may more easily produce an addendum containing the clinical justification. As such, we finalized our policy to say that a typed addendum containing the narrative which is electronically or hand signed by the physician is acceptable. We do not believe that allowing "check boxes" or "standard language" as part of the physician narrative is appropriate, since the intent of the narrative is to capture the physician's synthesis of each patient's unique conditions, and allowing for more general depiction of the patient's condition is contrary to what we are trying to capture as part of the physician narrative.

We published our finalized policy, regarding this change to the physician certification and recertification, in the August 6, 2009 final rule. Specifics of the final policy can be found on pages 39399 – 39400 of that rule (74 FR 39384). This policy will become effective October 1, 2009.