BURDEN ESTIMATES

Comment: Several commenters noted their belief that CMS' burden estimate is outdated, underestimated, or otherwise flawed; reasons reported included current operational realities, staffing shortages, the complexity of individualized addendum preparation, a limited number of beneficiaries currently requesting the addendum and that only a small percentage of admissions have a completed addendum, electronic health record configuration costs, reports of the proposed timeframe requirements creating unintended consequences. In addition, a commenter reported that the addendum process and contents were not changed making the proposal for a mandatory election statement less feasible; another commenter reported that busy hospice agencies will experience a higher administrative burden and that the requirement will be cumbersome. Additionally, one commenter reported that 55 percent of hospice beneficiaries did not have any non-hospice spending in FY 2024, arguing that this statistic supports retaining the current request-only addendum framework. Conversely, a non-hospice provider group supported the projected net burden reduction for non-hospice providers, specifically noting that the amount of time needed to communicate with hospice providers would reduce significantly.

Response: We appreciate the detailed operational feedback provided by commenters regarding the burden estimate for the proposed mandatory election statement addendum. We acknowledge commenters' concerns and take seriously the operational challenges identified by hospice providers, hospice advocacy groups, and electronic health record vendors. As commenters acknowledge, the burden estimate completed in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38534) was calculated under the assumption that hospices would provide the addendum to all beneficiaries, not just those who request it. This means that the FY 2020 estimate already accounted for the full volume of addenda that would be required

under the mandatory proposal. A one-time addendum form development cost was accounted for in the FY 2020 burden estimates and despite the cost for initial form development, there was still a $5.2 million net reduction in total provider burden. The FY 2027 updated burden estimates continue to demonstrate a significant total overall burden reduction to hospice and non-hospice providers. Furthermore, addenda completed for beneficiaries with no non-covered items would require significantly less time for the hospice to complete given that the form would not have a documented list of items, services or drugs or the hospice could simply acknowledge on the form that there are no unrelated items, services or drugs, thereby reducing the overall estimated burden.

We appreciate commenters reiterating that the FY 2020 burden estimate assumed hospices would provide the addendum to all beneficiaries, and that some individuals do not have any non-covered items; specifically, one commenter reported that 55 percent of hospice beneficiaries did not have any non-hospice spending in FY 2024. Given this information, the burden for those hospice beneficiaries would be lower than what the burden estimate accounts for, as addenda with no non-covered items would be significantly faster to complete and explain to the patient. The addendum for a patient with no non-covered items is, by definition, a straightforward document and the clinical determination that all care is related to the terminal illness or related conditions is one that hospices are already required to make as part of the comprehensive assessment and care planning process under the hospice CoPs.

We reiterate that it is a longstanding CoP (§418.56(e)(5)) that hospices are already required to develop and maintain a system of communication and integration among all providers furnishing care to the terminally ill patient. This includes the ongoing sharing of information with other non-hospice healthcare providers and suppliers furnishing services

unrelated to the terminal illness and related conditions, which is necessary to ensure coordination of services and to meet the patient, family, and caregiver needs. The mandatory addendum requirement does not create a new substantive clinical obligation; rather, it formalizes and standardizes the communication of existing determinations that hospices are already required to make. As hospices are already required to review, determine, and document information on unrelated conditions per the hospice regulations and CoPs, the incremental burden of converting those determinations into a written, beneficiary-facing addendum is appropriately characterized in the burden estimates. The numerous comments received regarding concerns about the burden associated with communication obligations that have been longstanding CoP requirements, in conjunction with the drastic increases in non-hospice spending, reports from electronic health record vendors that there are common unrelated items identified for hospice beneficiaries, and the significant opposition from hospice providers to providing addenda to hospice beneficiaries, raise concern as to why hospice providers are opposed to providing written documentation of information that is already required to be communicated among all providers, hospice beneficiaries, and their families, and why hospice providers are stating that more time is needed to complete the addendum when hospices should be providing virtually all of the care that is needed for terminally ill beneficiaries (48 FR 56010, § 418.24(b)(3)), which includes not only the beneficiary's terminal diagnosis but also any related conditions.