

## THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: JULY 16, 2020

### Service

Hospice & Palliative Care

### Industry

Healthcare

### Professionals

MEG S.L. PEKARSKE

MADISON:

608.234.6014

MEG.PEKARSKE@

HUSCHBLACKWELL.COM

BRYAN K. NOWICKI

MADISON:

608.234.6012

BRYAN.NOWICKI@

HUSCHBLACKWELL.COM

EMILY M. SOLUM

JEFFERSON CITY:

573.761.1120

EMILY.SOLUM@

HUSCHBLACKWELL.COM

# COVID-19: CMS Green Lights Contractors to Restart Hospice Medical Reviews

## Medical reviews to restart

The Centers for Medicare & Medicaid Services (CMS) medical review activity suspended due to COVID-19 is set to restart on August 3, 2020, regardless of the public health emergency status. Hospices that were in the midst of an audit or other medical review process should be ready to reengage in those processes and be prepared for new audit activity.

## Prior suspension lifted

On March 30, 2020, CMS issued “Provider Burden Relief Frequently Asked Questions (FAQs),” which stated that CMS was suspending most medical review activities. These actions were taken in response to the Trump Administration’s direction to issue waivers that “equip the American healthcare system with maximum flexibility to respond to the Novel Coronavirus (COVID-19) pandemic.”<sup>[1]</sup> The goal of the waivers and the suspension of medical reviews was to allow providers to focus their time and resources on patient care during the public health emergency.

CMS’ suspension of medical review activity specifically included the Targeted Probe and Educate (TPE) program, post-payment reviews conducted by the Medicare Administrative Contractors (MACs), Supplemental Medical Review Contractor (SMRC) reviews, and Recovery Audit Contractor (RAC) audits. CMS did not mention Unified Program Integrity Contractors (UPIC) audits, and those UPIC audits already in process continued. It appears, however, that new UPIC activity slowed substantially.

## What to expect

On July 7, 2020, CMS updated its FAQs document to announce that it was discontinuing the suspension of medical review activities effective August 3, 2020, regardless of the status of the public health emergency. In its update, CMS noted that it was restarting the medical review activities because states were reopening and because of the “importance of medical review activities to CMS’ program integrity efforts[.]” Therefore, providers should be on alert beginning August 3, 2020, for requests from government auditors regarding pre- or post-payment reviews. It is likely that auditors will be testing hospice documentation related to other recent waivers, rule changes or flexibilities issued by CMS, including waivers related to virtual visits and telehealth services. It is important to seek guidance from legal counsel if you receive notification of any pre- or post-payment reviews that relate to these new CMS waivers, rule changes or flexibilities.

### **Some relief still available**

Although CMS is directing its contractors to restart their medical review activities beginning August 3, any provider selected for a review and experiencing COVID-19-related hardships that may affect the timeliness of the provider’s response can reach out to its MAC requesting additional response time. Moreover, it appears that the flexibilities provided for the deadlines in the audit appeal process remain in place, for now.

### **Contact us**

For more information regarding CMS hospice medical reviews, please contact Meg Pekarske, Bryan Nowicki, Emily Park or your Husch Blackwell attorney.

### **Comprehensive CARES Act and COVID-19 guidance**

Husch Blackwell’s CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.

---

[1] See CMS Press Release, “Trump Administration Makes Sweeping Regulatory Changes to Help U.S. Healthcare System Address COVID-19 Patient Surge” (Mar. 30, 2020), available at <https://www.cms.gov/newsroom/press-releases/trump-administration-makes-sweeping-regulatory-changes-help-us-healthcare-system-address-covid-19>.