

The Time is Now to Heed New Face-to-Face Requirements for Home Health and Hospice

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Effective April 1, 2011, home health and hospice certifications will require documentation of a “face to face” encounter. Although the hospice and home health agencies are at risk for non-payment of services if these new certification requirements are not met, physicians involved in certification will be under scrutiny for the legitimacy of the face to face documentation and therefore, should also be aware of these requirements.

Home Health Face-to-Face Encounter

In order to satisfy the home health face-to-face requirements, the encounter must take place not more than 90 days prior to, or within 30 days after, the start of the home health care. The encounter may occur up to 90 days prior to the start of home health, if this previous face-to-face encounter was related to the reason the patient requires home health services. The encounter must be performed by a physician or an allowed non-physician practitioner (NPP), i.e., advanced practice nurse or physician assistant. If an NPP performs the face-to-face encounter, the practitioner must document the clinical findings and communicate those findings to the certifying physician. The documentation of the face-to-face encounter must be a separate and distinct section or an addendum to the certification, and must be signed and dated by the certifying physician.

Both physicians and NPPs who have a financial relationship with a home health agency are prohibited from conducting the face-to-face encounter unless the relationship falls within a Stark or anti-kickback exception.

Documentation of the face-to-face encounter must include a statement demonstrating that the encounter was for the same condition or conditions that represent the primary reason for home care services. In addition, the documentation from the encounter must include an explanation of the reasons for the patient’s homebound status and the medical necessity of either intermittent skilled therapy and/or skilled nursing services. Also, it is important to note that for patients referred directly from a hospital, a hospitalist could conduct the face-to-face encounter. To qualify, the hospitalist would need to document the encounter, perform the certification and review of the initial plan of care, and then clearly communicate the name of the physician in the community (i.e., the patient’s primary care

physician) who will continue to follow the patient going forward. In rural areas, the face-to-face encounter may also be conducted via telehealth services, so long as other program requirements are met for telehealth.

Hospice: Certification Requirements and Recertification Face-to-Face Encounter

A similar face-to-face encounter requirement was recently added in connection with the Medicare hospice recertification. Generally, in order for a patient to receive hospice care, a physician must certify that the patient is suffering from a terminal illness and that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course. In 2009, CMS added a clinical narrative requirement to the certification process. In accordance with this requirement, the physician is required to prepare a narrative that outlines the clinical findings that support a life expectancy of no longer than six months in order to certify a patient for hospice. This narrative must be reflective of the patient's individual clinical conditions and cannot contain form language or check-box information. Further, the physician is required to attest that he or she wrote the narrative personally, based on examination or the patient's medical records. This additional measure is designed to ensure that the physician has personally diagnosed the patient's condition, and is not just signing off on what another clinician on the nursing staff has concluded.

The regulations effective April 1, 2011 require a hospice physician or nurse practitioner to undertake a face-to-face encounter with all hospice patients prior to the 180-day recertification, and all subsequent recertifications, to determine a patient's continued eligibility for hospice. The face-to-face encounter is not required for certification of the first or second 90-day benefit period, but must be performed for patients entering their third (60-day) benefit period, and for any and all subsequent 60-day benefit periods. While nurse practitioners may conduct the face-to-face encounter, only a physician may certify the patient's terminal illness. Thus, if a nurse practitioner conducts the encounter, he or she must certify that the clinical information was provided to the certifying physician.

The hospice recertification face-to-face encounter must occur within 30 days prior to the start of the 180-day recertification or subsequent recertifications. Without a valid face-to-face encounter, Medicare will not cover the hospice stay. The face-to-face encounter requirements took effect on January 1, 2011 and CMS instructed Medicare Administrative Contractors to begin enforcement of the new requirement on April 1, 2011. Hospice providers need to integrate protocols to ensure that these

encounters are taking place with the appropriate personnel and in the timeframe required, or risk potential claim denials.

CMS has indicated that it will issue instructions to its contractors in connection with medical reviews and program integrity activities. These contractors will be tasked with making sure that providers are complying with the required timeframes set forth for the face-to-face encounters. CMS has also indicated that partial payments will not be made if the face-to-face encounter is performed outside the required timeframes.

In implementing compliance measures for the face-to-face encounter requirements, home health and hospice providers should review all guidance from CMS and its contractors to ensure that documentation is adequate and should also proactively collaborate with and educate referring physicians to ensure that they understand the requirements. In the past, the OIG has issued special fraud alerts warning physicians not to falsify or act with reckless disregard when signing certification statements. Because of the logistic difficulties associated with the new face to face requirements, physicians may find themselves under increased pressure to create documentation that would expose them to allegations of criminal or civil misconduct in the home health and hospice certification process.