

New Audit Risk for Home Health Agencies: Face to Face Certification Requirements

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Noncompliance with the recently enacted face-to-face certification requirements are one of the newest compliance risk areas for home health agencies which could lead to denials in future audits. The face-to-face requirements are part of the Patient Protection and Affordable Care Act (PPACA) and require physicians to perform face-to-face encounters on home health patients as part of the home health certification. While PPACA originally required compliance with this requirement by January 1, 2011, CMS recently announced that it will delay enforcement of the requirement until April 1, 2011.

In order to satisfy the face-to-face requirements, certain criteria must be met. First, 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. Second, this 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. This regulatory requirement prevents a home health agency from hiring physicians or NPPs to perform the face-to-face encounters and is an important consideration for a home health agency setting up a program for compliance with the new requirements.

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 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.

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.

Physicians and home health agencies should note that the face-to-face encounter is only required for the initial certification, and is not required for any subsequent recertification.

In developing compliance policies, home health agencies should review all guidance from CMS and contractors on this issue to ensure that documentation is adequate. Home health agencies should also proactively collaborate with and educate referring physicians to ensure that they also understand the requirements prior to the April 1, 2011 effective date.