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FACE-TO-FACE REQUIREMENTS: WHAT PITFALLS LIE AHEAD FOR HOME HEALTH AGENCIES?

- The long-awaited rule on home health face-to-face encounters has been published.
- OIG recently indicated its intent to focus on the home health industry.
- Home health agencies can learn from the pitfalls other providers have experienced with the face-to-face requirements.
- Thorough documentation is required to ensure compliance with both the technical and medical necessity elements of the face-to-face encounter.
- Compliance programs, including training, should be updated to reflect the face-to-face requirements.

In November 2012, the Centers for Medicare & Medicaid Services ("CMS") issued a long-awaited final rule that clarified statutory requirements that physicians must follow to certify patients as eligible for the Medicare home health benefit.[1] In the newly promulgated rule, physicians are required to complete face-to-face encounters with each home health patient at regular intervals and assess the patient's eligibility under Medicare's complex medical necessity guidelines.[2] The face-to-face encounter rule and the procedures home health agencies ("HHA") must develop to comply with the rule are fraught with compliance and reimbursement implications for the home health industry. Although challenging, compliance with this rule has become even more important as the Office of the Inspector General ("OIG") recently announced its intent to focus its review efforts on face-to-face encounters by HHAs.[3]

As noted in the OIG's Work Plan for 2013, which summarizes the OIG's activities for the upcoming fiscal

1 Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2013, Hospice Quality Reporting Requirements, and Survey and Enforcement Requirements for Home Health Agencies, 77 Fed. Reg. 67068 (November 8, 2012) (to be codified at 42 CFR pt. 424).

2 *Id.* at 67106.

3 U.S. Dept. of Health and Human Services, Office of Inspector General, Work Plan Fiscal Year 2013, 11-12. *Available at* http://1.usa.gov/1aADq9p.

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year, the OIG intends to analyze the extent to which HHAs are complying with the face-to-face encounter requirements. In light of the government's ongoing focus on fraud and abuse activities in the health care industry, as well as the OIG's intent to focus specifically on HHAs in this upcoming year, it is vital that HHAs are knowledgeable about the requirements of face-to-face encounters and develop compliance measures to respond effectively to those requirements.

FUNDAMENTAL REQUIREMENTS

The first step to complying with the face-to-face encounter rule is to fully understand its technical requirements.[4] To certify a patient as eligible for home health services, physicians are required to certify that:

Home health services are (or were) needed because the patient is (or was) confined to the home;
The patient needs (or needed) skilled services on an intermittent basis;
A plan of care has been established and is periodically reviewed by a physician, and
The services are (or were) furnished while the patient is (or was) under the care of a physician.

Furthermore, as of January 1, 2011, Medicare requires that a certifying physician document that the physician, or an allowed non-physician practitioner ("NPP"), had a face-to-face encounter with the individual seeking home health services.[5] Allowable non-physician practitioners include a certified nurse-midwife, a physician assistant, or a nurse practitioner or clinical nurse specialist working in collaboration with the physician.

Once this encounter occurs, the certifying physician must personally compose a narrative describing the patient's clinical condition as observed during the face-to-face encounter and documenting how the patient's clinical condition supports the patient's homebound status and need for skilled services. The narrative must be signed by the certifying physician, and the certification must include both the date when the physician or NPP saw the patient and the date when the physician signed his/her narrative.[6]

POTENTIAL PITFALLS OF THE FACE-TO-FACE ENCOUNTER

Although the face-to-face encounter requirement is new to the home health industry, the face-to-face requirement is not new to other segments of the health care industry. Indeed, hospice providers have been required to complete face-to-face encounters to recertify patients for hospice services since January 1, 2011.[7] Similar to the face-to-face requirements now imposed on HHAs, CMS requires that hospices meet specific requirements when conducting and documenting face-to-face encounters. The Medicare Benefit Policy Manual requires that a hospice physician or hospice nurse practitioner must have a face-to-face encounter with the beneficiary within 30 days of the individual's third benefit period, and up to 30 days prior to every subsequent benefit period. The physician or nurse practitioner is required to document the specific clinical findings found in that encounter and attest that these findings support a life expectancy of six months or less.[8]

Because hospice providers have been reviewed for compliance with face-to-face requirements since the final rule specific to hospice agencies was finalized in November 2010, HHAs may learn valuable lessons from some of the pitfalls that hospices have experienced with face-to-face documentation. Most notably, hospice providers have experienced an uptick in Medicare contractor audits and resulting claims denials, often based on technical flaws in the face-to-face documentation. In many instances, hospice claims have been denied because of a lack of signature by the certifying physician and/or the lack of a date on the certification. In

4 42 C.F.R. § 424.22(a).
5 42 C.F.R. § 424.22(a)(v).
6 42 C.F.R. § 424.22(a)(v)(D).
7 42 C.F.R. § 418.22(a)(4).
8 Centers for Medicare & Medicaid Services: Medicare Benefit Policy Manual, Pub. No. 100-02, ch. 9 § 20.1 (Rev. 144, April 06, 2011). *Available at* http://go.cms.gov/15PGYCV.

other instances, hospice claims have been denied because the narrative is not deemed sufficient to justify the patient as appropriate for hospice.

The increasing amount of audits and resulting claim denials not only negatively affect hospices' reimbursement flow but also place an increasing burden on hospices to analyze the cost/benefit ratio associated with appealing such denials. Complicating the hospice's evaluation of whether to appeal is the realization that the administrative appeal process by which providers appeal claim denials is incredibly backlogged, so much so that it may take months, if not a year or more, to appeal denied claims. During this time, interest continues to accrue on the amount sought to be recouped by a Medicare contractor.

STRATEGIES TO REDUCE THE RISK OF SUCH PITFALLS

In light of what hospices have experienced with claims denials based on perceived flaws in the face-to-face encounter documentation, HHAs can implement a number of strategies to reduce the risk of being subject to denials related to face-to-face requirements. For example, to reduce the risk of claim denials resulting from technical documentation errors, it is important for HHAs to thoroughly analyze what Medicare specifically requires for face-to-face encounters and the corresponding documentation of such encounters. This, in turn, will enable HHAs to prospectively evaluate their face-to-face encounter forms to ensure that all appropriate data fields and required language are contained in the forms. That way, when the face-to-face encounter forms are completed, there will be a clear roadmap as to exactly what information should be included on the form. Furthermore, by ensuring that the forms have all required fields and language, the HHA will immediately be able to determine whether the grounds for any denial, particularly if technical, are based on Medicare requirements or possibly an inaccurate interpretation of those requirements by the Medicare contractor.

Additionally, it is important for HHAs to ensure that all staff fully understand the specifics of the face-to-face requirement. To accomplish this, HHAs are urged to update their regular compliance training to specifically address the face-to-face requirement, including documentation of the face-to-face encounter. As part of this compliance training, it may be wise to incorporate any claims denials based on face-to-face requirements into real-time training, so that any flaws in the face-to-face procedures and documentation are corrected immediately to avoid similar errors in the future. It may also be wise for HHAs to provide specific training on the face-to-face requirement and associated documentation to those individuals responsible for appealing claims denials, so that those individuals can easily understand the grounds for denial and evaluate the risks and benefits of appealing a particular claim.

MEDICAL NECESSITY

In addition to ensuring that HHAs and their staff fully understand the requirements of the face-to-face encounter and corresponding documentation, it is also imperative that HHAs fully understand the medical necessity implications of the face-to-face encounter form. Under the hospice requirements, with regard to medical necessity, Medicare requires that the narrative statement prepared by the certifying physician be based upon the clinical condition of the patient at the time of the encounter.[9] If the certifying physician concludes that the patient continues to be eligible for hospice services, the narrative statement must describe, in particular, the clinical conditions of the patient that support the physician's medical determination. Similarly for HHAs, if the certifying physician concludes that the beneficiary is eligible for home health services, the narrative statement must describe, in particular, the clinical conditions that support that the patient is homebound and requires skilled services.[10]

9 *Id.*
10 42 C.F.R. § 424.22(a)(v)(D).

Although the physician must personally prepare the narratives, HHAs can assist the physician in this process in several ways. For example, the HHAs can ensure that the physician has all of the medical records for that patient immediately available to him/her, along with the clinical documentation from the face-to-face encounter. By doing so, the HHA can ensure that the physician has all clinical information available from which to make an accurate assessment of the patient's eligibility for home health services. HHAs also can provide training to their certifying physicians on the requirements of the face-to-face rule, including the definition of "homebound" and "need for skilled services," so that that the physicians fully understand the clinical conditions for which beneficiaries may be eligible for home health services.

TAKEAWAY POINTS

Although the new face-to-face encounter rule has compliance and reimbursement implications for HHAs, the strategies described above can help ensure that the complex requirements do not negatively affect the HHAs' overall compliance with Medicare regulations or their reimbursement flow. Knowing the face-to-face encounter rule and its nuances, as well as developing strategies to respond to its requirements, are important for all HHAs, especially now that the OIG has expressed its intention to review HHAs over the next year.

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