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Physician/Client Face-to-Face Encounter Requirements for Home Health Services Clarified

By **Carla J. Cox**

CMS has issued Transmittal 139 to the Medicare Benefit Policy Manual dated February 16, 2011, clarifying the provisions requiring face-to-face encounters between the certifying physician and the home health patient. The new requirements in Transmittal 139 will be implemented March 10, 2011. In order for a patient to be certified to receive home health services, a physician must certify that the home health services are needed because the patient is confined to the home. For home health care services starting after January 1, 2011, the physician must document that he or an allowed non-physician practitioner ("NPP") has had a face-to-face encounter with the patient. The face-to-face encounter must occur no more than 90 days prior to the home health start of care date or within 30 days after the start of care.

Although certain NPPs may perform the face-to-face encounter and inform the certifying physician regarding the clinical findings exhibited by the patient during the encounter, the certifying physician must document the encounter and sign the certification. The NPPs who are allowed to perform the face-to-face encounter are:

- A nurse practitioner or clinical nurse specialist working in collaboration with the certifying physician in accordance with State law;
- A certified nurse-midwife as authorized by State law;
- A physician assistant under the supervision of the certifying physician

NPPs performing the encounter are subject to the same financial restrictions with the home health agency ("HHA") as the certifying physician, as described in 42CFR 424.22(d). These restrictions generally prohibit a physician who has a financial relationship with a home health agency from certifying a patient for home health services unless the financial relationship falls within one of the exceptions to the physician self referral law commonly known as the Stark Law.

The encounter documentation must include the date when the physician or allowed NPP saw the patient and a brief narrative composed by the certifying physician describing how the patient's clinical condition as seen during that encounter supports the patient's homebound status and need for skilled services. The certifying physician must document the encounter either on the certification, which the physician signs and dates, or a signed addendum to the certification. The certification or addendum may be hand-written or typed.

It is acceptable for the certifying physician to dictate the documentation content to one of the physician's support personnel

to type. It is also acceptable for the documentation to be generated from a physician's electronic health record. It is *unacceptable* for the physician to verbally communicate the encounter to the HHA, where the HHA would then document the encounter as part of the certification for the physician to sign.

When a physician orders home health care for a patient based on a new condition that was not evident during a visit within the 90 days prior to start of care, the certifying physician or an allowed NPP must see the patient again within 30 days after the start of care. Specifically, if a patient saw the certifying physician or NPP within the 90 days prior to start of care, another encounter would be needed if the patient's condition has changed to the extent that standards of practice would indicate that the physician or a non-physician practitioner should examine the patient in order to establish an effective treatment plan.

When a home health patient dies shortly after the start of care but before the face-to-face encounter occurs, the certification is deemed to be complete if a good faith effort was made by the HHA to facilitate/coordinate the encounter and if all other certification requirements were met.

Under certain conditions, an encounter between the home health patient and the attending physician who cared for the patient during an acute/post acute stay can satisfy the face-to-face encounter requirement. A physician who attended to the patient in an acute or post-acute setting, but does not follow the patient in the community (such as a hospitalist) may certify the need for home health care based on his/her contact with the patient, and establish and sign the plan of care. The acute/post-acute physician would then transfer the patient's care to a designated community-based physician who would assume care for the patient.

Additionally, a physician who attended to the patient in an acute or post-acute setting may certify the need for home health care based on his/her contact with the patient, initiate the orders for home health services, and transfer the patient to a designated community-based physician to review and sign off on the plan of care.

The face-to-face encounter can be performed via a telehealth service from an approved originating site. An originating site is considered to be the location of an eligible Medicare beneficiary at the time the service being furnished via a telecommunications system occurs. Medicare beneficiaries are eligible for telehealth services only if they are presented from an originating site located in a rural health professional shortage area or in a county outside of a Metropolitan Statistical Area. Entities that participate in a Federal telemedicine demonstration project approved by (or receiving funding from) the Secretary of the Department of Health and Human Services as of December 31, 2000, qualify as originating sites regardless of geographic location.

The HHA must be acting on a physician plan of care that contains all of the elements set out in Section 30.2.1 of Transmittal 139. Transmittal 139 contains new and more specific requirements for plans of care that include a course of treatment for therapy services. It should be noted that a course of therapy treatment can only be established by the physician after any needed consultation with a qualified therapist. Further, for therapy services the plan of care must specify measurable therapy treatment goals that pertain directly to the patient's illness or injury and the patient's resultant impairments, must include the expected duration of therapy services, and must describe a course of treatment that is consistent with the qualified therapist's assessment of the patient's function.

At the end of the first 60 days of service, a decision must be made whether or not to recertify the patient for a subsequent 60 days. An eligible beneficiary who qualifies for a subsequent 60 days of service would start the subsequent 60-day period on day 61. Under the home health prospective payment system, the plan of care must be reviewed and signed by the physician every 60 days unless one of the following occurs:

- A beneficiary transfers to another HHA;

- A discharge and return to the same HHA during the 60-day episode;
- Medicare does not limit the number of continuous episode recertifications for beneficiaries who continue to be eligible for the home health benefit. The physician certification may cover a period less than but not greater than 60 days

These new requirements will raise new questions as implementation begins. Additionally, failure to meet any of the new requirements will form the basis for future audit exceptions and potential denial of payment.

If you have any questions regarding this e-Alert, please contact **Carla J. Cox** at 512.236.2040 or **cjcox@jw.com**.

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