

PUBLICATION

Home Health Face-to-Face: Continuing Deficiencies and Possible Relief [Ober|Kaler]

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The Affordable Care Act mandates that a Medicare beneficiary have a “face-to-face” (F2F) encounter with a physician before the physician can certify that the patient is homebound and in need of skilled care and thus qualifies for home health services. CMS has implemented this provision in the regulation at [42 CFR § 424.22\(a\)\(1\)\(v\)](#), which requires not only that the physician see the patient within certain time parameters, but also that the physician document how the clinical findings of the F2F encounter support the need for home health services. The regulation also specifies which physicians or physician extenders can prepare and sign the documentation. To attempt to clarify these requirements, CMS has published numerous MLN Matters articles (SE 1038, SE1219, SE 1405) as well as 17 pages of F2F Questions and Answers, which are available on the CMS website's [Home Health Agency Center](#).

Given the complexities of these documentation requirements, home health agencies (HHAs) have struggled with trying to comply. While HHAs have been educating referring physicians on these provisions, the ultimate documentation by the physician is out of the control of the HHA. This has resulted in the denial of many HHA claims by the Medicare Administrative Contractors (HH MACs) due to inadequacies of the F2F documentation.

An [OIG Report](#) issued in April found that 32 percent of the claims reviewed by the OIG had inadequate F2F documentation. In 10 percent of the cases, the F2F documentation was missing entirely. Of those with some F2F documentation, 25 percent were missing at least one of the required elements, the most common of which was the signature of the certifying physician. The narrative content of the F2F documentation was often inconsistent and not in compliance with CMS guidance. The OIG found that variations among the HH MACs as to whether they would accept checkboxes added to the complexity. The OIG was critical of CMS for providing minimal oversight of this requirement and suggested that CMS develop a standardized form for F2F documentation.

After months of relaying the HH industry's concerns over the burdens of the F2F documentation requirements to CMS without any definitive response, in early June the National Association for Home Care & Hospice (NAHC) filed a lawsuit against CMS in federal district court in the District of Columbia to challenge CMS's implementation of the statutory F2F requirement. The Complaint charges that CMS “implemented a simple and understandable statutory requirement for a physician/patient encounter by adding complex, unnecessary, and unauthorized physician documentation requirements.” Specifically, the Complaint contends that CMS impermissibly expanded the F2F encounter requirement to include a detailed narrative explanation as to why the patient is “homebound” and in need of skilled nursing or therapy services. “Not only have the Defendants added unauthorized physician documentation, they have also devised and administered these physician documentation requirements in a manner that renders it nearly impossible to achieve compliance as they are wholly confusing to physicians, home health agencies, and patients, leading Medicare administrative contractors to evaluate claims in a manner that is inconsistent, arbitrary, and inaccurate.” The Complaint seeks to have the court invalidate the existing F2F requirements and require CMS “to promulgate and administer reasonable, consistent, and comprehensible documentation requirements in a manner that permits physicians, beneficiaries, and home health agencies that are acting in good faith to comply.”

Ober|Kaler's comments:

The combination of the recent OIG Report and the NAHC lawsuit may result in CMS revising the F2F requirements in such a way that they are easier to comply with. Until that happens, however, HHAs will have to continue to work with their referring physicians to develop documentation that can support each patient's need for home health services.