



September 2, 2014

Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Medicare and Medicaid Programs; CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies; Proposed Rule

Dear Administrator Tavenner:

On behalf of the American College of Physicians, we are writing to share our comments on the proposed rule for the *Medicare and Medicaid Programs; CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies*. ACP is the largest physician medical specialty society, and the second largest physician membership organization, in the United States. ACP members include 141,000 internal medical physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

The Affordable Care Act (ACA) established a face-to-face encounter requirement for certification of eligibility for Medicare home health services, by requiring the certifying physician to document that he or she, or a non-physician clinician working with the physician, has seen the patient. The encounter must occur within the 90 days prior to the start of care, or within the 30 days after the start of care. Documentation of such an encounter must be present on certifications for patients with starts of care on or after January 1, 2011. The ACP understands and supports the intent of the requirement and supports CMS' effort to reduce fraud and abuse in the Medicare and Medicaid programs. Furthermore, ACP commends and appreciates CMS' intent to reduce the burden of this requirement on physicians and home health agencies (HHA).

ACP understands that CMS is proposing to eliminate the narrative requirement for the home health face to face encounter requirement. Instead of the narrative, CMS is proposing to review the medical record for the patient from the certifying physician or the acute/post-acute care facility used to support the physician's certification of patient eligibility. ***The College is concerned that rather than reducing the burden, this proposal merely shifts the burden to the medical record rather than the current certification or form used by many physicians and HHAs. In addition, the College seeks clarification on what type of specific information CMS would look for in the medical record, where CMS plans to look for this information in the medical record, and how CMS plans to receive this information from the***

certifying physician or acute/post-acute care facility. Specifically, the College calls for CMS to be more specific in terms of the medical record proposed requirement in the following areas:

- ***What is the required information?*** The proposed rule does not specify what type or what form the information in the medical record is required to be considered “sufficient” for patient approval for home health care. This lack of clarity could cause confusion, claim denials, and delay in patient care. In addition, if CMS plans to still require the same information as is currently required in the narrative, it is likely that physicians will still have to write out a narrative in the medical record, therefore merely shifting, not reducing, the burden on certifying physicians. In addition, ACP seeks clarification on whether a certification (or form) would still need to be sent along with the medical record for CMS review and/or approval.
- ***Where would the required information be in the medical record?*** Currently, physicians might include the type of information required in different areas of the medical record, such as the history of present illness, assessment and plan, summary of care, or an addendum/note. CMS should be more specific as to how and where they would like to see this documented in the electronic record and paper record. The College is concerned that CMS may have a hard time sorting through the different areas of the medical record (even in an electronic health record (EHR)) to find the required information to approve the home health care, thus causing a potential delay in patient care and/or, as proposed, a denied claim. In addition, EHR systems are not uniform and currently do not “cue” physicians to provide the information needed to justify the home health certification. Furthermore, relying solely on the medical record may be more burdensome to those practices that have not yet transitioned to an EHR system. Practices that use an EHR could set up a template or alert in their system to send the information to the HHA. This is not the case in paper practices and it is likely that many practices have already incorporated the certification into their current practice workflows. In addition, using a certification or form is likely to be less burdensome for physicians who certify on behalf of their colleague/partner and would be easier to use in team based care. Relying solely on the medical record may be difficult for CMS to figure out who is the responsible certifying clinician and will require CMS to search for the notes when care is shared by a team of health professionals.
- ***How will CMS receive the information?*** Lastly, the College seeks clarification on how CMS is going to receive and review this information, especially for ambulatory practices and those that do not have an EHR system. Requiring practices to print, scan, and/or fax the entire medical record would cause an increased burden on practices compared to the current process of filling in a short form.

The College encourages CMS to explore a phased in approach that would allow physicians to have the option to use a process that is similar to the current certifications, while still eliminating the narrative requirement, or allow certifying physicians to use the medical record, with the clarifications requested above, as proposed in this rule. This would allow CMS to learn over time how best to capture or find the necessary information from the medical record before requiring it as the only acceptable form of information. In addition, the College believes relying on the medical record alone could be an increased burden for practices that have not yet transitioned to an EHR system. In addition, ACP encourages CMS to explore ways to simplify the current certification/form to allow CMS to certify that home health care is necessary for the patient (such as checkboxes, only require documentation that encounter occurred, etc.).

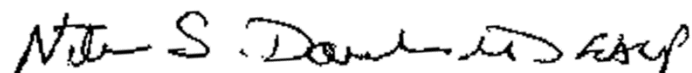
ACP strongly does not support conditioning physician payment on whether the patient is found to be eligible for home health care due to the lack of details in determining the specifics of this regulation in

sub-regulatory guidance. In addition, changes to physician payment should be made through the **Medicare Physician Fee Schedule (PFS) rule making process to ensure that stakeholders, especially physicians, are aware of this proposed change and have the opportunity to submit public comments.** We urge CMS to step back and look at the PFS as a whole rather than just at individual components. Imagine that you are a doctor in a small practice in your hometown, and you have to digest all of this, determine how it applies to you, and figure out all the changes you will have to make in your practice to comply with all of the relevant components. Remember that this is on top of all of the other constantly changing requirements that CMS places on your practice. How do you know what to do? Even if you can figure out what to do, where do you find time to do it all. CMS must keep in mind the overwhelming impact of the constellation of constantly changing requirements that you require of physicians. If CMS does not withdraw this proposal, ACP encourages CMS to be transparent in the sub-regulatory guidance development and implementation. Furthermore, CMS should engage in outreach to the stakeholders impacted by such guidance to ensure that physicians are aware of the potential impact on their practices and patients.

In summary, the College supports CMS' goal of ensuring appropriate beneficiary access to care and reducing fraud and abuse in the Medicare program without placing undue burden on clinicians. We thank you for the opportunity to comment and appreciate your effort to address this issue while taking into consideration the perspective of and impact on clinicians and patients.

Please contact Michelle Koltov at mkoltov@acponline.org or 201-261-4500 if you have any questions regarding this letter or would like to request collaboration with the College to address the stated issues of concern.

Respectfully,

A handwritten signature in black ink that reads "Nitin S. Damle MD FACP". The signature is written in a cursive, slightly slanted style.

Nitin Damle, MD, FACP
Chair, Medical Practice and Quality Committee
American College of Physicians