March 12, 2011

Jonathan Blum
Director
Center for Medicare
Centers for Medicare and Medicaid Services
Hubert H. Humphrey Building
200 Independence Ave, SW
Washington, DC 20201

Home Health Face-to-Face Encounter Rule

Dear Mr. Blum:

On December 23, 2010, the Centers for Medicare and Medicaid Services (CMS) issued a Transmittal that set April 1, 2011 as the date at which it would fully enforce the so-called physician face-to-face encounter rule that is the outgrowth of section 6407 of the Patient Protection and Affordable Care Act (PPACA). This step in the implementation of the rule was set because CMS, Congressional offices, and all the parties directly involved in the application of the rule concluded that a transitional period was needed to effectuate nationwide awareness of the rule and for all parties to establish the systems necessary to comply.

Significant Confusion Remains

Over the last three months, the undersigned organizations and their constituents have worked to help make physicians, non-physician practitioners (NPPs), Medicare beneficiaries, hospitals, and home health agencies (HHAs) understand the rule and their roles in compliance. Likewise, CMS undertook unprecedented efforts to issue interpretive guidance and to convey the policy requirements to all affected parties. The engagement of all these parties is consistent with the commitments each made in our meetings and discussions.

Based on inputs from across the country, we respectfully request that CMS extend the April 1 enforcement date to no earlier than July 1. Despite the extraordinary efforts to achieve a level of understanding and an intention to comply, all of the undersigned parties are very concerned that patients will lose access to vitally needed care.

The reasons necessitating the extension of the transition period are numerous. On a February 28 phone call with your staff, there were reports of delays in patient discharges

and a lack of basic knowledge and readiness among physicians and hospitals regarding the face-to-face requirements.

These reports are backed up by a comprehensive survey conducted by the National Association of Homecare and Hospice (NAHC) that documented: a) confusion regarding the paperwork obligations for physicians; b) still evolving policy interpretations and guidance; and c) the simple need for more time to get the tens of thousands of physicians and NPPs to understand the rule.

The NAHC survey fully demonstrates the need to extend the deadline another three months. The survey was conducted over the period of February 25 to March 2. During that period, over 3400 home health agencies from across the country responded. Those responses were consistent across geographic areas, urban/rural service areas, agency size, and the agency type. The survey revealed that:

- 84% of HHAs provided education on the rule to physicians and NPPs but more than 78% of HHAs indicate that physicians are not yet prepared to begin providing the required documentation, and will not be ready by April 1st;
- Of those HHAs that supplied information to physicians and NPPs, 67.5% reported confusion among physicians.
- 46% of HHAs fully understand the requirements
- While the majority of HHAs will admit patients who have not yet met the encounter requirements, 30.2% indicate that they are not able to admit patients unless it can be established prior to admission that the patient fully meets the encounter requirements, including the narrative that physicians consider highly burdensome and duplicative.
- Where HHAs indicate that they will admit patients, 79.9% report that they will be forced to discharge patients if the requirements are not met by the close of the 30 day qualification period.

The detailed survey results are attached.

Need for Greater Administrative Simplification

Physicians are confronting a growing number of requirements as a result of health system reform, in addition to the implementation of health information technology and HIPAA deadlines (5010 and ICD-10) Many of these new requirements have corresponding documentation procedures, and physicians have voiced concerns that burdensome documentation procedures are often barriers to achieving compliance.

At a time when the Administration is looking for ways to reduce regulatory burdens, pursuant to the President's Executive Order issued January 18 which calls for agencies to "consider regulatory approaches that reduce burdens and maintain flexibility," we believe

that the documentation requirements for the face-to-face encounter can be significantly streamlined.

While section 6407 of PPACA requires that the physician document that the encounter took place, the CMS rule and interpretive guidance requires much more, including a narrative as to why the patient clinical findings specifically support Medicare coverage. As has been reported in our meetings with CMS, many physicians see this added documentation component as unnecessary, duplicative, and unduly burdensome. The recommended solutions from NAHC's survey include:

- Allow checkboxes as in the current Form 485--- 82.5%
- Eliminate the narrative and only require documentation that the encounter occurred—76.9%
- Permit HHAs to assist physicians with the documentation—72%
- Allow the attachment of existing documents that contain the information—71%

Evolving Compliance Standards

Even today, four months after publication of the Final Rule, policy interpretations continue to be developed. On our February call with CMS, physician and hospitals groups indicated that policy clarifications, modifications, and misinterpretations in the field mean that educational efforts must first dismiss incorrect information before accurate guidance can be absorbed.

For example, CMS in early March resolved a longstanding question by allowing (actually requiring) the use of the Home Health Beneficiary Notice of Noncoverage (HHABN) Option 2, to inform patients when care will be terminated due to the face-to-face visit requirement not being met.

A second, highly relevant development is the position shared by CMS in early March that it would be acceptable for a physician to attach an existing clinical record that contains the sought after documentation without need to develop a separate document.

The two cited policy developments are just among those recently issued by CMS. The interpretive guidelines were just issued on February 16 and FAQs continue to be published. CMS is not to blame for their timing. As stated earlier, the fact is that this matter is very complicated.

More Time Is Needed

The physician community originally recommended a minimum of six months to transition to and test the new policy. See, AMA letter December 23, 2010. This is consistent with the recommendations of members of the face-to-face workgroup.

Providers in the field agree with 96.78% of those reporting in the NAHC survey that at least three more months are needed.

The physician/NPP community is vast and highly varied in location and support to understand and apply new Medicare policies. Also, the dust is still settling around what is required, so assurances of compliance are unlikely. The extension sought will allow for resolution of any interpretive issues, comprehensive awareness action, and full "dry run" testing. The results of "dry run" testing to date are in and they indicate that all parties are not ready.

Recommendations

The primary barrier to compliance is the paperwork burden on physicians. A secondary barrier is getting certain patients to see a physician/NPP face-to-face. The solution to the documentation concerns lies within CMS authority. We respectfully recommend that CMS take additional steps to mitigate the physician paperwork burden as follows:

1. Modify the documentation requirement to require that physicians need only provide a signed, written statement that the encounter took place at a point within the 90/30 day window for clinical services related to the need for home health care.
2. Alternatively, permit the use of the model Physician Certification and Plan of Care (formerly Form 485) to meet the documentation requirement with a modification of the certification statement to incorporate an appropriate reference to the required encounter, and/or, the attachment of existing routine documentation that the visit occurred. HHAs should be permitted to draft this composition provided the physician acknowledges the clinical findings.

A statutory change may be necessary to address the problems certain patients have in accessing a physician encounter. We would like to discuss with CMS a variety of ideas on possible legislative and additional non-legislative approaches to enhancing patient access to services. Regardless, given the importance of patient access to care, we respectfully request that CMS monitor beneficiary access to home health care in real time. This could be done, for example, by requiring HHAs to report to the fiscal intermediary whenever they deny services to patients due to the lack of a face to face visit. A copy of the HHABN Option 2 or other denial could be sent to the fiscal intermediary.

Conclusion

Thank you for your time and consideration of this request and our recommendations. We greatly appreciate all that CMS has done to effectuate this provision from PPACA. We especially thank you for your direct engagement and that of CMS leadership in this matter of great importance to patient access to care.

AARP

American Academy of Home Care Physicians

American Academy of Family Physicians

American Case Management Association

American College of Physicians

American Medical Association

American Medical Directors Association

American Osteopathic Association

Center for Medicare Advocacy

Leading Age

National Association for Home Care & Hospice

Society of Hospital Medicine

Visiting Nurses Associations of America