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Val J. Halamandaris, JD
President

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Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
US Department of Health and Human Services
200 Independence Ave, SW
Washington, D.C. 20001

Via email: Marilyn.Tavenner@cms.hhs.gov

Dear Mr. Cavanaugh:

We write today to suggest a phase-in of the application and enforcement of the new documentation requirement in the Medicare home health face-to-face physician encounter rule. The rule change requires that certifying physicians have sufficient documentation in their records to support the certification of a patient's homebound status and need for skilled care.

The new documentation requirement takes effect on January 1, 2015. However, CMS has not yet issued any interpretive guidance on the rule change nor has there been any educational efforts directed towards physicians or home health agencies on it. While an "Open Door" call is scheduled for December 16, it is highly likely that any information conveyed in that call will not be conveyed to all the physicians and home health agencies that care for home health patients sufficiently to bring about full compliance by January 1. It is also likely that there will be many unanswered questions remaining after the call that will require CMS to issue further guidance.

Even if full guidance is issued before the end of the year, it will take time for home health agencies and physicians to conduct internal staff education, develop internal process and checks, and coordinate with each other to address the necessary changes in their work flow processes.

Since the inception of the current face-to-face rule, the home care community has strived to achieve compliance through extensive education of both providers and the physician community. NAHC expects

to play a significant role in assisting our member agencies again to do so. However, the effective date of the new requirements is just days away.

Our past experiences with the face-to-face requirements indicate that there is a clear need for comprehensive and detailed guidance along with widespread dissemination of educational materials, both to home health and to physicians. There is also a learning curve on such new requirements.

In the past, CMS has recognized the value of phasing-in the application and enforcement of rules that require interpretive guidance and extensive education of affected parties. In fact, CMS delayed enforcement of the current face-to-face rule in 2011 because of the significant changes needed by physicians and home health agencies. In the final rule, CMS recognized the ongoing confusion with the standards of compliance. With this new generation of requirements, we should learn from that experience and first issue any necessary guidance, complete the essential education, and test the understanding of the affected home health agencies and physicians before enforcing the new requirements with claims audits and coverage denials.

We suggest the following steps be taken in the implementation of the new requirements:

1. CMS should conduct the scheduled December 16 call and solicit input from all stakeholders on that call.
2. CMS should hold a stakeholder meeting involving representatives of the home health community, physicians, Medicare beneficiaries, and Medicare contractors.
3. Following the call and the stakeholder meeting, CMS should issue draft interpretive guidance for public review and comment.
4. Comprehensive interpretive guidance should be issued following consideration of the public comments.
5. CMS and its contractors should conduct education and outreach on the new requirements to the home health and physician communities along with updates to the CMS and contractor web sites to include the guidance on compliance standards. A strong effort should be made to directly engage the physician community, going beyond the issuance of MLN Matters, as the key to success in achieving compliance involves the physician community.
6. The new documentation requirements would “go live” after the educational efforts are completed. However, compliance with the standards will initially be subject only to test auditing for purposes of studying the outcome of the guidance and education efforts. Based on the results of the test audits, any necessary changes in the guidance and education will be completed.
7. During the test audit phase, no claims would be subject to payment denial based on a failure to meet the new documentation requirements. This approach would not interfere with CMS’s authority to audit and review claims for all the other criteria for coverage.
8. Once the test audit phase is completed, CMS would issue a notice indicating the date when full enforcement will begin.

NAHC is ready, willing, and able to assist in any way CMS considers appropriate. We are committed to achieving the goals of the face-to-face requirements working in concert with CMS.

Thank you for consideration of this request. We look forward to an early response. Please contact William A. Dombi, Vice President for Law at NAHC, wad@nahc.org, if you have questions on this matter.

Very truly yours,

Val J. Halamandaris

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