



Client Alert



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CMS Provides Grace Period for Enforcement of New Hospice Regulation

On December 23, 2010, the Centers for Medicare & Medicaid Services (CMS) announced its plan to delay mandatory compliance with the new rule requiring that hospice providers conduct a face-to-face encounter for certain hospice patients prior to recertification. Although the Final Rule for Changes in Certification Requirements for Home Health Agencies and Hospices (Final Rule) became effective on January 1, 2011, the CMS responded to concerns expressed by the hospice industry about the implementation of the new face-to-face requirement and instructed its contractors to provide a three-month delay in the enforcement of the new rule. As a result, hospice providers have until April 1, 2011, to ensure that their documentation for recertification is in compliance with the new requirement for face-to-face encounters. The delay also applies to a new face-to-face encounter requirement for home health.

After its publication in the Federal Register in November 2010, the Final Rule was greeted by confusion from the hospice industry. Specifically, the new regulation revises the Medicare hospice certification requirements at 42 C.F.R. § 418.22 to require a hospice physician or nurse practitioner to conduct a face-to-face encounter with a hospice patient no earlier than 30 days prior to the recertification of the patient's third benefit period, and no later than the actual physician recertification. The new requirement was intended to encourage increased physician involvement and accountability in the recertification of a patient's terminal illness for those patients with long lengths of stay. However, guidance from the CMS and the language of the statute itself created uncertainty among providers regarding the timing of the face-to-face encounter. Particularly, in certain situations, such as when a patient re-elects hospice after a gap in services or is transferred to a new hospice provider immediately prior to the patient's third benefit period, providers would have only a two-day window (e.g., between Day 0 and Day 2 of the third benefit period) to provide a face-to-face encounter before the deadline for verbal recertification. Although the CMS acknowledged the hardship on hospice providers and hospice patients in such situations, the agency indicated that it did not have the statutory authority to change the timing of the requirement.

The three-month delay in Medicare enforcement of the hospice face-to-face encounter provides additional time for hospice providers to develop



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operational protocols and garner resources to meet the demands of the new requirement. However, the hospice industry needs to continue to communicate with the CMS to ensure that the new rule, once implemented, does not disrupt or limit patient access to hospice care.

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