

## Eli's Hospice Insider

### Regulations: Prep for More Miles with New Face-to-Face Encounter Rule

**Providers may keep costs in check with help from nurse practitioners.**

Hospice physicians will be putting on miles if a newly proposed rule for face-to-face encounters from the **Centers for Medicare & Medicaid Services** moves forward.

The proposed rule, part of the Affordable Care Act, requires that each hospice patient has a face-to-face encounter with a hospice physician or nurse practitioner before their 180-day recertification and for each 60-day recertification period going forward. The proposed rule was included in the July 23 Federal Register as part of the Home Health Prospective Payment System update.

Hospice patients must have the face-to-face encounter with their certifying physician no more than 15 days prior to recertification, starting with the 180-day recert, CMS says in the rule. The 180 days counts across all hospices from which a patient has received services.

A physician narrative associated with the recert "must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of 6 months or less," the rule proposes.

#### **Know Who Can Make the Visit**

The face-to-face visits can be performed by the hospice physician or by a hospice nurse practitioner. But only the physician can certify terminal illness. So, if the nurse practitioner does the visit, he or she must coordinate with the physician to provide appropriate documentation with which to determine whether the patient still has a life expectancy of six months or less.

"Patients and families can benefit from seeing the hospice physician," says **Samira Beckwith** with **Hope Hospice and Community Services** in Ft. Myers, Fla. "Fine tuning care, pain management, and medicine can come out of these face-to-face encounters."

"Hospices that have already been sending out a physician or medical director to see patients on admission shouldn't have a difficult time adjusting to the new requirements," says **Beth Carpenter**, president of **Beth Carpenter and Associates** in Lake Barrington, Ill. But those who haven't been providing such visits will see a more difficult time and additional expense.

Added cost: The proposed rule doesn't indicate whether these visits will be reimbursed, which has industry experts planning for the worst. "Unless CMS clarifies whether these visits will be reimbursed, hospices will be hard pressed to get physicians or nurse practitioners to do these visits," says attorney **Marie C. Berliner**, with **Lambeth & Berliner** in Austin, Tex. "Physicians are only paid for medically necessary visits."

"The feeling is that this is an administrative service -- not separately billable," says attorney **Meg Pekarske** with **Reinhart Boerner Van Deuren** in Madison, Wisc. "Unless the visits are done in tandem with a medically necessary visit, they will likely be un-reimbursable. My guess is that they will be tracking visits and probing claims to verify medical necessity."

As a result, Berliner predicts that hospices will want to push these visits to nurse practitioners because the cost is lower. "But physicians will still need to review documentation and certify the patients."

Bottom line: The proposed rule requires providers to add attestation language to certification forms, says consultant **Karen Vance** with **BKD** in Springfield, Mo. Physicians will need to sign and date to confirm that the face-to-face visit

took place.

### **Rural Hospices Face a Challenge**

Many rural hospices say there's no way they can meet the new face-to-face visit requirement, says Pekarske. With service areas spanning as much as 100 miles in each direction, the logistics become complicated.

"Who is going to want to drive all the way out in the country to do these face-to-face visits?" Pekarske asks. "Will you be able to get good people willing to do this job?"

Solution overlooked? While home health agencies are able to utilize telehealth in making patient visits, there is no mention in the proposed rule of the use of telehealth for hospices.

### **Proposed Rule Misses the Mark, Experts Say**

"CMS seems to be doing this as a way to keep out inappropriate patients, but this isn't the best way to do it," Beckwith says. We all agree that patients should be recertified appropriately, but the face-to-face encounter rule won't achieve this."

Additional development requests and focused medical reviews should help to weed out inappropriate patients, Beckwith says.

The face-to-face encounter rules may have the unexpected consequence of some hospices re-thinking admitting certain patients. Providers may begin to avoid longer length of stay patients who are expected to live another four or five months, Berliner says.

"You want to make sure the patient is appropriate, and the rule raises a valid concern for a long length of stay patient. But predicting terminal status isn't an exact science," Berliner says. "It makes sense to take a second look at long length of stay patients, but this is going to put a lot of stress on hospices if it isn't reimbursed."

"No matter what we do, we're going to have a certain percentage of patients who are with us for a year or two," Beckwith says.

Silver lining: The rule is still in proposed form which offers a huge opportunity for providers to weigh in with comments, either through associations or directly to CMS, Berliner says. CMS is accepting comments through September 14.

Note: Read the proposed rule here: <http://edocket.access.gpo.gov/2010/pdf/2010-17753.pdf> beginning on page 35.