

Eli's Hospice Insider

Regulations: Worried About FFE? CMS Offers Hospices Good News

Just when you thought there was no hope, CMS grants hospices an 11th hour reprieve.

If you were stressed out and worried about complying with the new face to face encounter requirement (FFE), you aren't alone -- but the **Centers for Medicare & Medicaid Services** has done what it said it wouldn't.

For months, CMS asserted that the Jan. 1 deadline for the FFE requirement published in the Nov. 17 Federal Register would stand. However, when push came to shove, the agency finally budged.

Why: For weeks, home care providers and their representatives had been giving CMS the full court press about the burdensome new physician visit requirement. In a Dec. 15 letter to CMS Administrator **Donald Berwick**, more than 25 senior and long-term care organizations joined the **National Association for Home Care & Hospice** in calling for a delay to the FFE requirement.

NAHC, other trade groups, and providers lobbied their elected representatives in Congress to ask CMS for the delay. And NAHC issued a press release informing beneficiaries and their families about the potential access problems related to the new initiative.

Background: Under the new FFE requirement finalized in the 2011 PPS final rule published in the Nov. 17 Federal Register, certifying physicians must see the home care patient 90 days prior to start of care or 30 days after care begins for the reason the patient is requiring home care. And the certifying physician must document the encounter as part of the certification itself or as a signed addendum to it.

The documentation must include the date when the encounter occurred and a brief narrative that describes how the clinical findings of the encounter support the patient's homebound status and need for skilled services. HHAs and hospices can't bill for the patients if the FFE isn't performed.

Victory: In late December CMS sent instructions to its Medicare contractors to push back the FFE enforcement date from Jan. 1 to April 1. "Beginning with the second quarter of CY2011 ... CMS will expect appropriate documentation of the encounter," regional home health intermediary **Cahaba GBA** said in a Dec. 27 e-mail to providers.

While it isn't the six-month delay NAHC was asking for, "NAHC appreciates that CMS has taken this responsible action," the trade group says.

The delay is a "relief" for hospices and HHAs, says the **National Hospice and Palliative Care Organization** in a release.

The **Visiting Nurse Associations of America** "is grateful that CMS recognized the significant implementation challenges facing home health agencies, physicians, hospitals, and patients in adapting to the new requirements," VNAA's **Andy Carter** tells **Eli**. "The additional three months to spread the word and finalize preparations will make a smooth implementation much more likely."

"Moving aggressively to curb abuse does not mean we have to put patient access to care at risk, which a Jan. 1 enforcement date would have done," Carter adds.

Keep at it: While the three-month enforcement delay is good news, it doesn't mean HHAs and hospices are off scotfree until April. Providers must still work diligently on the FFE requirement, the message from Cahaba makes clear.

"CMS is concerned that some home health agencies and physicians may need additional time to establish operational

protocols necessary to comply with this new law," the message says. "As such, CMS expects that during the first quarter of CY 2011, home health agencies and physicians who order home health services will collaborate and establish internal processes to ensure compliance."

Start now: "This announcement from CMS does not eliminate the requirement that hospice providers implement the face to face requirement on January 1, 2011," NHPCO stresses.

NAHC urges providers "to implement face-to-face encounters as soon as possible," the trade groups says. "Doing so will enable us to collect information about provider and beneficiary problems and pitfalls related to this regulation that need to be addressed with CMS."

Note: Watch for details about the **Eli**-sponsored audioconference on the FFE requirement coming in March at www.audioeducator.com.