

Health Information Compliance Alert

Compliancea: Steer Clear of F2F Violations with Medical Directors

Rules may be different for another physician's patients.

Do you know when it's OK for your medical director to perform the home health face-to-face encounter and accompanying documentation -- and when it's not? A new F2F frequently asked question might lead you in the wrong direction, one legal expert warns.

The question: "Can a home health agency Medical Director or physician perform the face-to-face encounter?" a questioner asks the Centers for Medicare & Medicaid Services in a FAQ posted on its website in May.

The answer: CMS's answer seems direct enough: "If the financial relationship between a home health agency physician and a Medical Director satisfies the requirements of an exception in 42 CFR §411.355 through §411.357, he or she may perform the face-to-face encounter and subsequently certify home health eligibility." The regulatory citation refers to the Stark physician self-referral law.

Under the F2F requirements, there is "a large temptation to have an agency's medical director and/or employed NP perform the face-to-face for the physician," observes attorney **Robert Markette Jr.** with Gilliland & Markette in Indianapolis. "A number of agencies are reading [the] recent CMS Q&A as allowing the Medical Director to perform the face-to-face, as long as the HHA's relationship with the Medical Director complies with Stark."

But Markette cautions against adopting that interpretation of the guidance. "The recently posted FAQ does not actually address whether an agency's medical director can perform the face-to-face on another physician's patient," Markette points out. "This topic is addressed in a number of other contexts and in every instance, CMS has said the same thing -- your medical director can perform the face-to-face on his or her own patients if the relationship with the HHA complies with Stark."

Bottom line: CMS has "not given a green light to the Medical Director simply performing all of the agencies' face-to-face meetings," Markette cautions.

HHAs also need to resist the temptation to pay for the F2F paperwork. "More than one agency has told me that they have been told they need to pay the physician in order to get the physician to complete the necessary paperwork," Markette reports.

Agencies may want to review basic kickback and prohibited remuneration rules in their F2F related education for physicians, as well as training for their own staff, experts suggest.

"Such training and education ... presents an opportunity for HHAs to reiterate their documentation policies and reinforce staff members' and physicians' understanding of the False Claims Act and Civil Monetary Penalties Law," offers attorney **Matthew Biggers** with Mitchell Day in Ridgeland, Miss. "Any failure to comply with the new requirements and/or to maintain adequate documentation regarding the new requirements could potentially result in liability under the False Claims Act and/or Civil Monetary Penalties Law," Biggers tells **Eli**.

Beware This Risk Area In Helping Docs

Another physician-related risk area for F2F is when you're giving your referring physicians forms to fill out for face-to-face encounters. You need to be careful you're not giving them too much help.

"The certifying physician's documentation of the face-to-face patient encounter ... cannot be a fill-in-the-blank type documentation," **HHH MAC NHIC** tells providers in a new fact sheet about the F2F requirement. The documentation

"would be either a separate and distinct area on the certification or a separate and distinct addendum to the certification that was easily identifiable and clearly titled. It must be considered part of the certification," NHIC says.

But giving physicians a simple prompt would be OK, CMS says in its F2F FAQs. When a home health agency asked "Can the homecare agency title a document with a lead-in phrase such as: I had a face-to-face encounter on _____ (date). The clinical findings support home health eligibility because:," CMS said that was fine.

"The lead-in phrase is acceptable as long as the physician completes the description of how the clinical findings support homebound status and the need for skilled services, in his or her own words," CMS explains in FAQ # 10299.

Remember: It's also OK for a physician's support staff -- sometimes including hospital discharge staff -- to draft the F2F narrative for the doc to sign. "We allow the physician's support staff to extract the documentation from the physician's medical record entries for the physician to sign," CMS says in a FAQ issued in May.

"In the case of patients admitted to home health from the hospital, hospital discharge planners who have access to the medical record entries of the physician who attended to the patient during the hospital stay may extract the documentation, assuming the attending is also the certifying physician."

But HHAs absolutely can't draft the narrative. "The law does not allow a home health agency to draft the documentation for the physician to sign," CMS emphasizes in FAQ # 10635.

Meanwhile, the industry continues to lobby for changes to the burdensome rule, with some apparent effect. A "Dear Colleague" letter similar to the one U.S. senators sent CMS last month is circulating in the House of Representatives, reports the National Association for Home Care & Hospice. The letter urges CMS to make documentation of the F2F encounter less difficult.

Note: The medical director FAQ is at http://questions.cms.hhs.gov/app/answers/detail/a_id/10634.

A link to all the F2F FAQs is at www.cms.gov/center/hha.asp. NHIC's fact sheet is at www.medicarenhic.com/providers/articles/HHF2FEncounterRequirement.pdf.