

## UPDATES TO HOSPICE FACE-TO-FACE ENCOUNTERS

In response to the changes contained in the Patient Protection and Affordable Care Act (ACA) designed to address increasing lengths of stay in hospice programs, CMS added a "face-to-face encounter" requirement to the hospice certification requirements.

Effective January 1, 2011, a hospice physician or nurse practitioner must have a "face-to-face" encounter with each hospice patient whose total length of stay is anticipated to reach the third benefit period. This encounter must be performed no more than thirty days prior to the third benefit period recertification, and no more than thirty days prior to any subsequent recertification.

CMS recently provided two answers addressing billable physician and nurse practitioner visits concurrent with the required face-to-face encounter.

**Q:** Are there circumstances under which hospice physician services are billable, i.e. when the physician provides reasonable and necessary non-administrative patient care (such as symptom management) at the time of (or in conjunction with) the hospice face-to-face encounter?

**A:** Yes. As we stated in the preamble to the November 2010 final rule, the face-to-face encounter is part of a hospice's administrative responsibility and is not billable. However, we also stated that when the physician provides reasonable and necessary medical services while conducting the face-to-face encounter, that portion of the visit would be billable. We believe that allowing for this type of billing will result in more hospice physician involvement with long-stay patients' care plans, and will increase the quality of patient care. We note that if the hospice patient has an outside attending physician, we would expect the hospice physician to coordinate with the attending to prevent duplication of physician services.

**Q:** Under what circumstances may a hospice bill for symptom management services provided by a nurse practitioner in conjunction with the face-to-face encounter?

**A:** As we stated in the preamble to the November 2010 final rule, the face-to-face encounter is part of a hospice's administrative responsibility and is not billable. However, the nurse practitioner's services can be billed by the hospice if the services are medically reasonable and necessary (such as for symptom management), if the patient has identified the nurse practitioner as his/her attending physician, and if those services are physician-level services rather than nursing services. The nurse practitioner must be a W-2 employee of the hospice; an employee of the agency or organization who is assigned to the hospice if the hospice is a subdivision of an agency or organization; or a volunteer of the hospice.

Additionally, CMS addressed the consequences of failing to perform the face-to-face encounter within the required time frame.

**Q:** What happens if the face-to-face encounter does not occur within the required time frames for hospice?

**A:** The hospice would be unable to recertify the patient's terminal illness and the patient would cease to be eligible for the Medicare hospice benefit unless exceptional circumstances, such as those described in Chapter 9 section 20.1(5)(d) of Medicare's benefit policy manual exist. Specifically, in cases where a hospice newly admits a patient who is in the third or later benefit period, exceptional circumstances may prevent a face-to-face encounter prior to the start of the benefit period. For example, if the patient is an emergency weekend admission, it may be impossible for a hospice physician or NP to see the patient until the following Monday. Or, if CMS data systems are unavailable, the hospice may be unaware that the patient is in the third benefit period. In such documented cases, a face to face encounter which occurs within 2 days after admission will be considered to be timely. Additionally, for such documented exceptional cases, if the patient dies within 2 days of admission without a face to face encounter, a face to face encounter can be deemed as complete.

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