



REFORM MEDICARE HOME HEALTH FACE-TO-FACE ENCOUNTER REQUIREMENT

ISSUE: Section 6407 of the Patient Protection and Affordable Care Act of 2010 (PPACA) establishes as a condition of payment for home health services coverage under Medicare that a patient have a face-to-face encounter with the physician who certifies the need for home health services. The encounter also can be provided by certain non-physician practitioners, such as Physician Assistants and Nurse Practitioners. However, when a non-physician practitioner provides the encounter, the patient's physician must still certify that the encounter occurred and compose documentation detailing the finding from the encounter in addition to any documentation produced by the non-physician practitioner. Also, while section 6407 allows the encounter to occur through the use of telehealth, the law extremely limits that option by referencing Medicare telehealth coverage requirements that rule out services in a patient's home.

While the intention behind section 6407 was to gain greater physician involvement in ordering home health services, early indications are that physicians are hostile to the new requirement, particularly the documentation standards that Medicare included in the implementing rule. Those documentation requirements are not contained within the law passed by Congress. Under the rule, a physician is required to document clinical findings with respect to the patient's need for home health services and explain how those clinical findings support Medicare coverage for prescribed care.

As constructed, the law does not accommodate the realities of medical practice where patients may be seen by multiple physicians in a course of care. Some of these physicians confine their practice to inpatient settings and generally only initiate care to patients discharged home rather than continue involvement with their care at home. As such, the requirements developed under PPACA section 6407 create unnecessary roadblocks to care.

The implementation of the face-to-face encounter rule has led to great confusion among physicians, home health agencies, and other parties involved. Medicare has tried to mitigate the confusion through various communications, but the requirements remain difficult to understand and apply. As a result, the rule is creating a barrier to access to care with practitioners determining that it is easier to care for patients in alternative settings to home health care.

In 2013, Medicare contractors stepped up claims reviews related to the face-to-face encounter requirements. These reviews triggered a high volume of inconsistent claim determinations and claim denials. The vast majority of denials focused on the adequacy of the physician documentation rather than the existence of a timely encounter. These claim determinations indicate that all stakeholders, including CMS, Medicare contractors, physicians, and home health agencies, are very confused as to what is necessary and appropriate documentation. Good faith efforts by physicians and HHAs to comply with the requirements are resulting in retroactive claim denials for necessary care.

RECOMMENDATION:

- Congress should monitor the impact of the face-to-face encounter requirements and, if necessary, repeal the provision and devise more constructive ways to secure physician involvement in home health care.
- Revise the face-to-face requirements to eliminate or significantly modify the physician documentation requirements as set out in the Medicare rule to eliminate the need for a physician to spell out why the patient's clinical condition requires Medicare covered home health services.
- Revise PPACA section 6407 to remove the reference to section 1834(m) of the Social Security Act and substitute a definition of telehealth services that allows an individual to meet the face-to-face encounter requirements through modern technologies available in their home. These technologies should include two-way audio and video communications.
- Establish exceptions to the requirements for patients who have been recently discharged from an inpatient setting, individuals in frontier areas where access to a physician or non-physician practitioner is limited, and individuals where a physician attests to the inability of the patient to leave the home for a physician encounter and is unable to have a physician perform a home visit.
- Provide financial protection to a home health agency that admits a patient in good faith with the reasonable expectation that a qualified face-to-face encounter has or will occur on a timely basis with appropriate documentation that is compliant with Medicare standards in the event that compliance is not met without the fault of the home health agency.
- Allow a non-physician practitioner to perform the encounter, certify that the encounter occurred, and compose all necessary documentation of the findings from the encounter.

RATIONALE: The purpose of the face-to-face requirement was to enhance physician involvement in home health care, not to discourage physicians referring patients to care in their own homes. There is no evidence that pre-existing methods of physician involvement and communication negatively impacted the quality of patient care. Further, any evidence of overutilization of Medicare coverage cannot be tied to a lack of physician involvement or the nature of physician/patient/home health agency communications. The benefits of the face-to-face requirement serving as a measure of program integrity are far outweighed by the harm the requirement causes relative to patient access to care.

The implementation of the rule has highlighted numerous areas where reform is essential. These include the need for clarified and reduced documentation requirements that discourage and dissuade physician from participating in home health services, modification of the authority to use a telehealth-based physician encounter to fit with current telehealth capabilities in the home, and revisions that recognize that some patients do not have direct access to a physician to provide the encounter. Also, the requirements place all responsibility and consequences on the home health agencies while all the necessary actions are under the control of the patient and physicians. With this lack of control over compliance, home health agencies that act in good faith in serving patients should receive Medicare payments when noncompliance is not their fault.