

Home Health and Hospice Rules Require Face-to-Face Patient Encounters

By Jennifer B. Van Regenmorter and Mindi M. Johnson, Foster Swift Collins & Smith, P.C.

BEGINNING JANUARY 1, 2011, face-to-face certification and recertification encounters with home health and hospice patients will no longer be simply good practice. In its proposed rules published July 23, 2010, and final rules scheduled to be published on November 17, 2010, the Centers for Medicare and Medicaid Services (CMS) implemented certain provisions of the Patient Protection and Affordable Care Act of 2010 and mandated such encounters.

With regard to home health services, the final rules require that a physician (or one of the listed nonphysician practitioners) must have a face-to-face encounter with a patient no more than 90 days prior to the patient's home health start-of-care date or within 30 days of the start of home health care. The physician must document the encounter by stating who met with the patient, giving the date of the encounter and explaining why the clinical findings of the encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services. The final rules also prohibit physicians and nonphysician practitioners who have certain financial relationships with a home health agency from conducting the face-to-face encounters when services will be provided to the patient by that particular home health agency.

In implementing these rules, CMS relied on the Medicare Payment Advisory Commission's (MedPAC's) March 2010 Report to Congress. The MedPAC report outlined fraud and abuse concerns and stated that there was a need to strengthen physician accountability in home health certifications.

Similarly, the final rules also address face-to-face encounters during hospice recertifications. The rules require a hospice physician or nurse practitioner to

have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the third benefit period. The encounters must take place no more than 30 days prior to the third-benefit-period recertification and again no more than 30 days prior to every subsequent recertification. Additionally, the physician or nurse practitioner who performs the encounter must sign an attestation that he or she had a face-to-face encounter with the patient and include the date of that visit.

The decision to mandate face-to-face encounters for hospice patients was made after CMS reviewed MedPAC's analysis of hospice trends between the years 2000 and 2008. During that time period, Medicare spending on hospice services nearly quadrupled.

Although it acknowledged innocent reasons for the spending increase, MedPAC faulted the current hospice payment system for providing an incentive for longer patient stays. It noted that visits and other high-effort services are most often provided immediately after

the beneficiary elects hospice and again at the end of life, with a lull in the middle of the hospice episode. The Medicare payment rate for hospice services is constant, however, regardless of the number of visits or services provided. Thus, a long hospice stay is more profitable to the provider because, on average, there are fewer visits and services provided to the patient. MedPAC reported that greater physician engagement was needed during the hospice certification and recertification process to ensure accountability and also to ensure the benefit is used to provide the most appropriate care to eligible patients.

Home health agencies, hospices, physicians and nonphysician practitioners are well-advised to comply with the new requirements to avoid any appearance of impropriety (and added scrutiny from CMS).

For assistance in complying with these and other health laws and regulations, please contact the home health and hospice attorneys in the Foster Swift Health Law Practice Group.

Hearing loss is on the rise. Be a hero and screen your patients today.

Hearing loss can hurt relationships, affect job performance, and hinder a child's learning ability. Yet it is a grossly under diagnosed condition and it is not going away anytime soon. In fact, a recent study in the *Journal of the American Medical Association* reported that hearing loss has increased by 30 percent among teens over the last 20 years. Another recent study in *The Hearing Review* found that over the last ten years hearing loss among Baby Boomers increased by 160 percent of the population. Constance Brown Hearing Centers wants to help make screening for hearing loss a simple and inexpensive addition to your patient's visit. Contact our offices today to purchase the **Ten Dollar Screener**.

Call (877) 343-2601
info@cbrown.org



CONSTANCE
BROWN
HEARING
CENTERS