

Hospice Face-to-Face Encounter Final Rule Published

Summary at a Glance:

Late Tuesday afternoon, November 2nd, the Federal Register posted the final rule for the Hospice Face-to-Face Encounter as part of the Final Rule entitled: **Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices.** Highlights in the final rule are as follows:

- A hospice physician, hospice Nurse Practitioner, or resident/ fellow physician rotating through the hospice may perform the face to face encounter.
- CMS clarified that the face-to-face encounter is based on benefit periods and not on actual days of care.
- Visit Timeframe is now 30 days: CMS has expanded the time frame for face-to-face encounters to 30 days prior to the start of the 180th-day recertification, and each subsequent recertification.
- CMS has changed the language in 418.22 (C)(4) from “must visit” to “have a face-to-face encounter” in order to make clear that the hospice has flexibility for the practitioner to see the patient – either at the patient’s home or by the patient coming to see the physician or NP.

Clarification that the face-to-face encounter is NOT billable. The billing regulations for hospice do not allow for physician reimbursement for administrative activities of physicians.

The Requirement:

The Affordable Care Act amends section 1814(a)(7) of the Social Security Act to require that **on and after January 1, 2011, a hospice physician or nurse practitioner (NP)** must have a face-to-face encounter with every hospice patient to determine the continued eligibility of that patient **prior to the 180-day recertification, and prior to each subsequent recertification.** Furthermore, the Affordable Care Act requires that the hospice physician or NP attest that such a visit took place, in accordance with procedures established by the Secretary of the HHS.

Specific provisions in the final rule:

1. Who Can Perform the Encounter?

Physicians:

- **Certifying terminal illness:** By statute, only a physician (not a NP) may certify a patient’s terminal illness.
- **Definition of hospice physician:** A “hospice physician” is a physician either employed by or working under arrangement with a hospice (i.e., contracted).
- **Increased accountability:** By limiting “hospice physician” to those physicians who are employed by or working under contract with a hospice, CMS also increases accountability, as the hospice is in control of its employees and contracted physicians.

- **Hospice physician duties:** The physician who has the face-to-face encounter must be the same physician who is composing the narrative and signing the certification.
- **Residents and Fellows:** Medical residents or fellows who are rotating through a hospice may provide the required face-to-face encounter if they are employed by the hospice or are working under contract with the hospice, and if they will be composing the narrative and signing the recertification.
- **Volunteer physicians:** Physicians or NPs who volunteer for a hospice are considered employees, and could make the required visits.

Contracting with another hospice: Hospices may contract with another hospice to use its physicians to conduct required face-to-face encounters.

Nurse Practitioners:

- **Nurse Practitioners conducting the face-to-face encounter:** A nurse practitioner (NP) is allowed to furnish a face-to-face encounter. The NP would then need to provide the clinical findings from that encounter to the physician who is considering recertifying the patient. CMS states that “this new statutory requirement will better enable hospices to comply with hospice eligibility criteria and to identify and discharge patients who do not meet those criteria.”
- **Contracting with NPs:** Hospices cannot routinely contract with NPs. NPs fall under nursing services, which are designated in the Hospice Conditions of Participation as a core service. Contracting is allowed only in situations involving extraordinary circumstances or if the NP services are highly specialized. Face-to-face encounters do not qualify as an extraordinary circumstance, since they are administrative in nature and usually planned.
- **Using Nurse Practitioners for face-to-face encounters:** Hospices can employ NPs on a full-time, part-time, or per diem basis if needed to have face-to-face encounters. As long as the NP is receiving a W-2 form from the hospice, or is volunteering for the hospice, the NP is considered to be employed by the hospice.

2. Benefit Periods/180 Days

- CMS has clarified that the face-to-face encounter is based on benefit periods and not on actual days of care, so it must occur prior to the third Medicare benefit period, regardless of the number of days the patient has received hospice care.
- The dates of benefit periods are now required to be on the certification form.

3. Where should the face-to-face encounter take place?

CMS has changed the language in 418.22 (C)(4) from “must visit” to “have a face-to-face encounter” in order to make clear that the hospice has flexibility for the practitioner to see the patient – either at the patient’s home or by the patient coming to see the physician or NP. However, the Medicare Hospice Conditions of Participation (CoPs) in §418.100(a) require that hospices provide care that optimizes patient comfort, and is consistent with the patient’s and family’s needs and goals, so all patient transport must have that goal in mind. If a hospice patient travelling to the hospice physician or NP required ambulance transportation because of his or her medical condition, the ambulance transportation would be included in the hospice per diem; it cannot be billed to the patient or billed separately to Medicare.

4. Time Frame for Completing the Face-to-Face Encounter

- **Visit Timeframe is now 30 days:** CMS has expanded the time frame for face-to-face encounters to 30 days prior to the start of the 180th-day recertification, and each subsequent recertification. CMS states “We believe this additional time will provide hospices with the flexibility they need to meet this Congressional mandate, to provide adequate time for discharge planning when indicated, and to accommodate other logistical issues discussed in the public comments.”

- **Face-to-face is just part of the recertification process:** While the entire recertification cannot be completed more than 15 days prior to the start of the benefit period, we are clarifying that the face-to-face encounter and its accompanying attestation are only parts of the recertification, and therefore can be completed up to 30 calendar days prior to the start of the 3rd benefit period recertification and each subsequent recertification.
- **What if a patient or family member refuses?** If a patient or family member refuses to allow the hospice physician or NP to make the required visit, a hospice could consider discharge for cause, as the refusal would impede the hospice's ability to provide care to the patient. The hospice would need to follow the procedures for discharge for cause, which are given in §418.26.

5. Is the face-to-face encounter billable?

- **Face-to-face encounter considered administrative.** The face-to-face encounter is NOT billable. The billing regulations for hospice do not allow for physician reimbursement for administrative activities of physicians. The certification or recertification of terminal illness is not a clinical document, but instead is a document supporting eligibility for the benefit and is considered an administrative activity of the hospice physician. The face-to-face requirement is part of the recertification, and therefore is an administrative activity included in the hospice per diem payment rate.
- **Reference in the Claims Processing Manual:** Section 40.1.1 of the Claims Processing Manual (Internet Only Manual 100-04, Chapter 11): "Payment for physicians' administrative and general supervisory activities is included in the hospice payment rates. These activities include participating in the establishment, review and updating of plans of care, supervising care and services and establishing governing policies."
- **Providing reasonable and necessary non-administrative patient care during the face-to-face encounter:** If a physician or nurse practitioner provides reasonable and necessary non-administrative patient care such as symptom management to the patient during the visit (for example, the physician or NP decides that a medication change is warranted), that portion of the visit would be billable.
- **When billing is appropriate, who should bill?** Billing for medically necessary care provided during the course of a face-to-face encounter should flow through the hospice, as the physician or NP who sees the patient is employed by or where permitted, working under arrangement with the hospice (for example, a contracted physician).
- **Documentation for the billable portion of the visit:** If there is a billable portion attributable to the visit, hospices must maintain medical documentation that is clear and precise to substantiate the reason for the services that went beyond the face-to-face encounter, and which apply to the billed services; this can be done in one note. Ensure that the visit documentation clearly supports any billable services that were provided.

6. Transitions on January 1, 2011

- **Existing patients who enter the third or later benefit period in 2010:** For existing patients who entered the 3rd or later benefit period in 2010 and were recertified do not need face-to-face encounters until the first recertification date in 2011.
- **Existing patients who enter the third or later benefit period in 2011:** Patients who enter the 3rd or later benefit period in 2011 must have a face-to-face encounter when their recertification time period is near.

7. Transfers

- When a patient who is in the 3rd or later benefit period transfers to a new hospice, the receiving hospice must recertify the patient, but it does not have to have a face-to-face encounter for that current period if it can verify that the previous hospice provided the visit.

8. Newly Admitted Patients who have Previous Hospice Service

- CMS describes recertification as a process and currently allow 2 calendar days after a period begins for a hospice to provide either a written or a verbal certification or recertification. If a verbal certification is provided, the written certification, including the narrative and the face-to-face encounter, must be completed prior to filing the claim. Therefore, certification or recertification has a specified time requirement. The face-to-face encounter and brief physician narrative often occurs over a period of time.

9. Hospice Risk Management for Face-to-Face

- The face-to-face requirement is part of the hospice recertification process. Having a valid recertification is a statutory requirement for coverage and payment. CMS states that they would have grounds to demand and recoup payments for claims that were paid based on an invalid recertification which did not satisfying the face-to-face requirement.

10. Determination of Hospice History

- **Use the Common Working File:** CMS states that hospices should be using Common Working File (CWF) queries for the most accurate beneficiary information. If providers are unsure how to use the CWF queries, they should contact their Fiscal Intermediaries/MACs. Because CWF has 9 host sites, a provider would have to search through up to 9 databases to determine if a patient who moved from another part of the country received prior hospice care; a beneficiary's records are only in 1 of the 9 databases, so as soon as the beneficiary is located, the search may cease.
- **Operating Hours:**
 - Monday – Friday: 6:00 am to 6:00 pm
 - Saturday: 6:00 am to noon
- **Another option for checking hospice history:** If CWF is not available, hospices have another option for verifying a patient's hospice benefit periods, using an inquiry that is usually available 24 hours per day, 7 days per week, 365 days per year: the Health Insurance Portability and Accountability Act (HIPAA) Eligibility Transaction System (HETS), specifically the 270/271 transaction. Those hospices that file their claims through a clearinghouse, or which have a direct connection to CMS, or whose MAC provides an internet portal, would have access to the HETS system as a data source for their eligibility.

The HETS 270/271 inquiry is in real time, but claim information lags up to 24 hours. It is also a national database, therefore there is no need to search multiple host sites. A 270 transaction is a transaction query and a 271 transaction is the response to the user. A 270 transaction query for a patient's benefit periods will return up to 3 years of data, showing all prior hospice benefit periods. This query system can be used if the CWF system is not available; providers can see it on the [CMS website](#).

11. Certification/Recertification/Brief Narrative and Face-to-Face Encounter Forms

- **Note:** NHPCO will provide sample forms for provider members to use and adapt.
- **Certification/Recertification form should:**
 - State that the patient is terminally ill, with a prognosis of 6 months or less if the illness runs its normal course;
 - Includes a written narrative either immediately prior to the physician's signature, or as a signed addendum.
 - Currently, the narrative includes a statement under the physician signature attesting that by signing, the physician confirms that he/she composed the narrative based on his/her review of the patient's medical record or, if applicable, his or her examination of the patient; CMS stated in the rule that they agreed that for consistency, the narrative and its accompanying attestation should be above the physician's signature, and the face-to-face attestation should be above its accompanying signature, and they will change the regulatory text to reflect this.
 - Is accompanied by clinical information or other documentation supporting the diagnosis.

- **Face-to-face encounter and attestation:**
 - Fourth component to the recertification.
 - Either a separate and distinct area on the recertification form, or a separate and distinct addendum to the recertification form, that is easily identifiable and clearly titled.
 - Attestation language should be located directly above the physician or NP attestation signature and date line.
- **Attestation statement includes:**
 - Date of the visit
 - Signature of the physician or NP who made the visit
 - Date signed.

Note: The date of the face-to-face encounter does not have to match the date that the attestation was signed; however, both dates should be included.
- **Face-to-face attestation is separate and distinct from the narrative and its attestation:** CMS states that “hospices are free to decide how to separate the sections (that is, through spacing, through lines, etc). For consistency, the narrative and its accompanying attestation should be above the physician’s signature, and the face-to-face attestation should be above its accompanying signature.
- **Narrative and face-to-face content order:** If the narrative and its attestation and the face-to-face attestation are included as part of the certification (rather than as an addendum), CMS suggests, but does not require, the order of the content to appear as follows:
 - the face-to-face attestation (if applicable),
 - followed by the physician narrative,
 - followed by a narrative attestation,
 - followed by the physician signature.

We believe this order is logical as it allows the narrative attestation signature to be the same as the certification or recertification signature for those hospices which include the face-to-face attestation and narrative as part of the main certification document.

- **Single page:** Hospices also have the option of placing the face-to-face attestation, the physician’s or NP’s signature, the narrative, and its attestation and signature, on a single page as an addendum to the main certification or recertification.
- **Documentation:** Documentation from face to face encounter is part of the clinical record, and should be used in composing the written narrative.
- **Electronic signatures:** Electronic signatures are permitted on hospice certifications and recertifications; the narrative and the face-to-face attestation are parts of the certification or recertification, and therefore may also be signed electronically.
- **Dating the certification:** If a physician forgets to date the certification, the Benefit Policy Manual (Internet only manual 100-02, chapter 9, Section 20.1) states, “If the physician forgets to date the certification, a notarized statement or some other acceptable documentation can be obtained to verify when the certification was obtained.” The certification or recertification applies to the benefit period dates noted on the document; therefore, if those dates are recorded incorrectly, the hospice could potentially have days of service denied for coverage during a medical review.

12. Telehealth

The statute does not include hospices as a site for telehealth. To add telehealth for hospice would require a statutory change.

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