

Compliance Tip Sheet

National Hospice and Palliative Care Organization
www.nhpc.org/regulatory



Recertification of the Hospice Terminal Illness Compliance Tip Sheet

INTRODUCTION

Hospice providers must obtain a written certification of terminal illness for each of the periods listed in §418.21, which consist of 2 periods of 90 days each, followed by an unlimited number of 60 day periods, even if a single election continues in effect for an unlimited number of periods, as described in §418.24(c).

The Affordable Care Act (ACA) 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 Medicare Hospice patient to determine the continued eligibility of that patient prior to the 180-day recertification (the 3rd or later benefit period), and prior to each subsequent recertification.** Furthermore, the ACA 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.

Transitions on January 1, 2011

- ★ **Current patients who enter the third or later benefit period in 2010:** Current 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.
- ★ **Current 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 prior to their recertification.

This tip sheet will review:

- ✓ Recertification Process and Content
- ✓ The Face-to-Face Encounter
- ✓ Recertification and Billing
- ✓ Certification/Recertification/Brief Narrative and Face-to-Face Encounter Forms
- ✓ Maintenance of Records

Recertification Process and Content

The Medicare regulations describe the certification and recertification as a process.

- (1) Written certification must be obtained before a claim is submitted for payment. (§418.22(a)(2))
- (2) If the hospice cannot obtain written certification within 2 calendar days, it must obtain oral certification within 2 calendar days. (§418.22(a)(3))

Content of the Recertification

Certification will be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. The certification must conform to the following requirements:

- (1) **Prognosis:** The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course.
- (2) **Clinical Information:** Clinical information and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification. Initially, the clinical information may be provided verbally, and must be documented in the medical record and included as part of the hospice's eligibility assessment.
- (3) **Face-to-face encounter:** A hospice physician or nurse practitioner (NP) must have a face to face encounter with the patient prior to the 3rd benefit period recertification. The purpose of this visit is to gather clinical information to be used to determine continued hospice eligibility.
 - ★ The physician or NP must sign and date a written statement attesting that they had a face to face encounter with the patient, and specifying the date the visit took place. The date of the visit and the date the attestation statement is signed may differ, but both dates must be specified.
 - If the face to face encounter is provided by an NP, his or her attestation must also state that the clinical findings of the visit were provided to the certifying physician for use in determining whether the patient continues to have a life expectancy of 6 months or less.
 - If the face to face encounter is provided by a physician, this same physician must use information gathered during the encounter to compose the brief narrative explanation of clinical findings that support a life expectancy of 6 months or less, and sign the recertification form.
- (4) **Narrative:** The physician certifying the patient must compose a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less. The narrative may be part of the certification form, or it may be attached as an addendum.
 - (i) If the narrative is part of the certification or recertification form, then the narrative must be located immediately prior to the physician's signature.
 - (ii) If the narrative exists as an addendum to the certification or recertification form, in addition to the physician's signature on the certification or recertification form, the physician must also sign immediately following the narrative in the addendum. In this case, the physician would sign in two separate places.
 - (iii) The narrative must include a statement directly above 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.

- ★ **The physician narrative may be electronically signed by the physician.**
- (iv) The narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients.
- (v) For patients recertified for the 3rd or subsequent benefit periods, the narrative must include an explanation of why the clinical findings of the face to face encounter support a life expectancy of 6 months or less.

NOTE: If a physician completes the face to face encounter, that same physician must also sign the attestation confirming that the visit occurred, complete the brief narrative statement/attestation and sign the recertification form.

The Face-to-Face Encounter

The Requirement:

- ✓ A hospice physician or nurse practitioner (NP) must have a face-to-face encounter with every hospice patient expected to reach the 3rd benefit period to determine the continued eligibility of that patient for hospice care. The face to face encounter must occur within 30 days prior to the 3rd benefit period recertification, and within 30 days prior to each subsequent recertification.
- ✓ The hospice physician or NP that has the face-to-face encounter with the patient should ensure that any clinical findings of the visit(s) are communicated back to the interdisciplinary group (IDG), for use in coordinating the patient's care. This is particularly true if the physician or NP discovers unmet medical needs during the billable or non-billable portion of the visit, so that the IDG can coordinate with any attending physician.

Who can Perform the Face-to-Face Encounter?

- ✓ **A hospice physician:** A "hospice physician" is a physician either employed by or working under arrangement with a hospice (i.e., contracted), or a volunteer.
- ✓ **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.
- ✓ **Nurse Practitioners:** A nurse practitioner (NP) is allowed to furnish a face-to-face encounter. The NP would provide the clinical findings from that encounter to the physician who is considering recertifying the patient.
 - **Hospices must employ, rather than contract with, NPs.** Since NPs are nurses, and nursing services are designated in the Hospice Conditions of Participation as a core service, hospices cannot routinely contract for their services. 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.
 - 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

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hospice, or is volunteering for the hospice, the NP is considered to be employed by the hospice.

NOTE: A nurse practitioner may not bill for services provided to hospice patients unless he/she has been designated by the patient as the patient’s attending physician.

Time frame for Completing the Face-to-Face Encounter:

- ✓ **30 days prior to the beginning of the 3rd or later benefit period**
 - o Complete the face-to-face encounter and the attestation that the face-to-face encounter took place.
 - o The date of the face-to-face encounter and the date of the attestation do not have to be the same date, but both dates must be listed on the attestation form.

Time frame for Completing the Recertification:

- ✓ **15 days prior to the beginning of a benefit period**
 - o The recertification of the terminal illness may be completed no earlier than 15 calendar days prior to the start of the next benefit period.
 - o For those patients about to enter their 3rd or later benefit period, the recertifying physician must use the findings from the face-to-face encounter in making their recertification decision.
 - o The recertification process is deemed complete if:
 - A face-to-face encounter has been conducted (3rd benefit period or later)
 - An attestation has been signed and dated, confirming the face-to-face encounter (3rd benefit period or later)
 - A brief narrative, reflecting the patient’s individual clinical circumstances, has been written by the recertifying physician, using the findings from the face-to-face encounter in the narrative for those patients in the 3rd benefit period or later.
 - The recertification form has been signed and dated, and includes the benefit period dates to which it applies.

Example of 3rd benefit period certification and subsequent benefit period timing:

May

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6 NEW BENEFIT PERIOD BEGINS	7	8
9 <small>Mother's Day</small>	10	11	12	13	14	15
16	17	18	19	20	21	22
23 30	24 31	25	26	27	28	29

May 6 – 3rd or subsequent benefit period begins.

May 8 – Verbal recertification must be obtained if no written recertification

April

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6 FACE-TO-FACE ENCOUNTER	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21 BRIEF NARRATIVE AND ITS ATTESTATION; RECERT COMPLETE	22	23	24	25
26	27	28	29	30		

April 6 – Face to face encounter and accompanying must occur up to 30 days prior to recertification date

April 21 – Brief narrative and its attestation may be completed no more than 15 days prior to the recertification date
Recertification complete - no more than 15 days prior to the recertification date

NOTE: Some state hospice regulations require both the attending and the hospice medical director to sign the recertification statement. Hospice providers should always adhere to the more stringent regulation applicable to them.

Where should the Face-to-Face Encounter Take Place?

- ✓ Can be completed either at the patient's home or by the patient coming to see the physician or NP.
- ✓ Hospice must ensure that transport meets the requirements in §418.100(a) that "care optimizes patient comfort and is consistent with the patient's and family's needs and goals"
- ✓ If a hospice patient travelling to a hospice physician or NP requires ambulance transport, the cost of transportation is included in the hospice per diem.
- ✓ Cost of ambulance transport cannot be billed to the patient
- ✓ Cost of ambulance transport cannot be billed separately to Medicare.

Hospice Discharge – the Patient is No Longer Eligible for Hospice Services

- ✓ The Medicare statute and payment regulations, require that patients who are no longer eligible for the benefit be discharged.
- ✓ The regulations at §418.26(d) require hospices to have a discharge planning process in place "that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill." ("Prospect" indicates that hospices should be considering whether stable or improving patients might become ineligible in the future, and plan for a possible future discharge.
- ✓ Hospices are required to follow any applicable State laws in addition to federal laws regarding discharge of a patient from hospice care.
- ✓ If a patient or family member refuses to allow the hospice physician or NP to have the required face-to-face encounter, 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.

Patient Transfers

- ✓ In a transfer situation, the benefit period does not change, so the originating hospice would have been responsible for any required face-to-face encounter if the patient was in the 3rd or later benefit period.
- ✓ When a patient who is in the 3rd or later benefit period transfers to a new hospice, the receiving hospice must:
 - Recertify the patient.
 - No face-to-face encounter is needed for that current period if the receiving hospice can verify that the previous hospice provided the visit.
 - Conduct a face-to-face encounter prior to the next benefit period.

Newly Admitted Patients who are Not Transferring from another Hospice but Have Had Previous Hospice Service in the Past

Even though this may be a new patient to your hospice, if the patient has been admitted on the Medicare hospice benefit previously, a recertification of terminal illness must be completed.

Steps for admitting a patient with a previous hospice history include:

- ✓ Determining the last benefit period used. Hospices are responsible for verifying which benefit period a patient is in at admission by using the Common Working File (CWF) to determine the beneficiary's benefit period.
 - ★ Refer to the **Recertification Process and Content** section, which appears earlier in this tip sheet.

Determination of Hospice History

1. **Check the Medicare Common Working File (CWF):**
 - a. There are several CWF query systems to determine which benefit period a hospice patient is in.
 - b. The CWF has 9 host sites; a provider would have to search through up to 9 databases to determine if a patient who previously lived elsewhere 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.
 - c. The CWF is required to be available from **6am to 6pm Monday through Friday** and **6am to 12pm on Saturdays**, by the time zone of the host site.
 - i. Regular downtimes: every Saturday, usually from 4pm to past midnight, Sundays from 7pm to 9pm (Central Time), and the third Sunday of every month from 12am to 4am (Central Time).
2. **HIPAA Eligibility Transaction System (HETS):**
 - a. If CWF is not available, hospice providers can use the HIPAA Eligibility Transaction System (HETS), specifically the 270/271 transaction.
 - i. 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 go to <http://www.cms.gov/HETSHelp/> for information on the HETS 270/271 transaction, or call 1-866-534-7315.
 - b. HETS is usually available 24 hours per day, 7 days per week, 365 days per year.

- c. 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.

Recertification and Billing

The face-to-face encounter: The face-to-face encounter by the hospice physician or the NP for the purpose of gathering clinical findings to determine continued eligibility for hospice care is NOT billable. The face-to-face requirement is part of the recertification process, and therefore is an administrative activity included in the hospice per diem payment rate.

- o 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.
 - *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 services during the face-to-face encounter is billable: If a physician provides reasonable and necessary non-administrative patient care, such as symptom management, to the patient during the visit (for example, the physician 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 and be billed as physician services under Part A, as the hospice 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 of the visit, hospices must maintain medical documentation that is clear and precise to substantiate the reason for the medically necessary services separate from the face-to-face encounter related to recertification. Documentation of the face-to-face encounter and any other medically necessary patient care services provided during the visit can be included in one note. Ensure that the visit documentation clearly supports any billable services that were provided.
- ✓ **NP billing:** Medically necessary care provided during the course of a face-to-face encounter by an NP can be billed only if the NP has been designated as the patient's attending physician.

Other Issues in the Face-to-Face Encounter Billing

Dating the certification: 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. (Medicare Benefit Policy Manual (Internet only manual 100-02, chapter 9, Coverage of Hospice Services, Section 20.1)

- ✓ **Transfers** from one hospice to another hospice:
 - For patient transfer to another hospice, the receiving hospice would use the same certification date as the previous hospice until the next certification period. (CMS, Medicare Claims Processing Manual-Chapter 11, 2009)

Untimely physician recertification: Hospices must use occurrence span code 77 to identify days of care that are not covered by Medicare due to untimely physician recertification. This is particularly important when the non-covered days fall at the beginning of a billing period. (CMS, Medicare Claims Processing Manual-Chapter 11, 2009)

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

CMS does not prescribe the use of a specific recertification form or dictate the format of the recertification form, but makes suggestions as to options a provider may adopt for their recertification forms.

NOTE: NHPCO has developed 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;
- ✓ Include a written narrative either immediately prior to the physician's signature, or as a signed addendum.
 - The narrative includes a statement ABOVE 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;
 - For narratives associated with the 3rd or later benefit period, it must include an explanation of why the clinical findings of the face to face encounter support a life expectancy of 6 months or less.
- ✓ Be signed and dated by the certifying physician, and include the benefit period dates to which it applies; and,
- ✓ Is accompanied by clinical information or other documentation supporting the diagnosis.

Face-to-face encounter and attestation statement:

- ✓ The attestation of the face to face encounter may be 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.
- ✓ The statement must attest that the signing hospice physician or NP had a face to face encounter with the patient, and state the date of the visit.

- If provided by an NP, the attestation also must state that the clinical findings of the visit were provided to the certifying physician for use in determining whether the patient continues to have a life expectancy of 6 months or less.
- ✓ The hospice physician's or NP's signature and the date it was signed must be directly below the attestation.

NOTE: The date of the face-to-face encounter does not have to match the date that the attestation was signed; however, both dates must be included.

- ★ **Attestation of the face-to-face encounter should be separate and distinct from the brief 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." However, if a physician has the face-to-face encounter, the attestation of that visit, the brief physician narrative, and the attestation regarding the narrative can all be placed above one physician signature.
- ★ **Option of single page or separate addenda:** Hospices also have the option of placing the face-to-face attestation, the physician's or NP's signature, the brief narrative, and its attestation and signature, on a single page as an addendum to the main certification or recertification, or as separate addenda.
- ★ **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 hospice physician signature.

CMS states: "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."

- ★ **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.

Maintenance of Records

Hospice staff must—

1. Make an appropriate entry in the patient's medical record as soon as they receive an oral certification;
2. File written certifications in the medical record, (§418.22(d), 2005);
3. Document the face-to-face encounter and attestation for the appropriate benefit periods; and
4. Document the brief narrative and attestation for the recertification of the patient.

Works Cited

CMS (2010, Nov 2) Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices, from Centers for Medicare and Medicaid Services: http://www.ofr.gov/OFRUpload/OFRData/2010-27778_P1.pdf

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Additional Related Resources from NHPCO:

- Sample Recertification of Terminal Illness forms and instructions for use
- Recertification Care Map
- Recertification of Terminal Illness Audit Checklist
- Frequently Asked Questions
- Hospice Regulations with Updated regulatory text at 418.22 – Certification of the Terminal Illness
- CMS Face –to-Face Final Rule – November 2010
- PowerPoint Presentation for Use in Staff In-Service Education