The Least You Need to Know: As the face-to-face encounter enforcement date drew nearer, hospices were left wondering about some significant areas of the rule. Within the last 5 days CMS issued a short set of Q&As and NHPCO sent out a report with helpful information from their conversations with CMS. It’s a mix of the positive and the negative with a dash of the puzzling. This communication is a summary of the changes and will be followed next week by a more in-depth review. The enforcement date remains April 1, 2011.

Additional Information

First the positive: It is permissible for one physician to complete the FFE and then report the findings to a second physician who then completes the narrative and certification. The relationship between both physicians and the hospice must meet the requirements in 42 C.F.R. §418.102.

Only one physician’s signature is required on the certification of a beneficiary re-electing the hospice Medicare benefit following a break in service due to discharge or revocation. The certifying physician may be the hospice medical director or hospice physician (meeting the requirements referred to above). This was reported last month but there was one MAC that was giving some signals that it might still expect two. Now that CMS has spoken there is no confusion.

Then the negative: Missing the timeframe for an FFE (either for a beneficiary currently on service or a new admission) equates to failing to meet the certification requirements required to establish a benefit period. No established benefit period means that the beneficiary – who is most likely still under care - is not a HMB patient.

To establish the benefit period, the hospice must take the same steps that it would to re-admit a patient in a third or subsequent benefit period under the hospice Medicare benefit (HMB). This includes (1) completing the FFE, (2) having the patient/representative complete a HMB election, (c) completing the physician narrative and certification and (d) meeting the care planning requirements – this even though the patient is already under your care.

Unfortunately, the word “discharge” has been attached to this situation and it is causing great (and understandable) confusion. Knowledgeable hospices know that there are only 3 allowable reasons to discharge a beneficiary from the HMB - and none fit this scenario. However, in this case a hospice is not “discharging” a patient from the HMB because the failure to complete the FFE means that no valid election period has been established – so there is no HMB.

Try thinking of it as a payor change – it will require changes in the patient billing record and, in most cases, submission of notifications to the MAC, but there will not be a discharge in the one-of-three-reasons sense of the word. We will provide you with step-by-step instructions next week – at which point it will make a lot more sense to you.

The Puzzling

The Internet Only Manual language released earlier this month created an allowance for “exceptional circumstances” that could arise when a hospice newly admits a beneficiary who is in the third or subsequent benefit period. The paragraph includes two (and now well-known) examples. A reasonable reader would believe that the paragraph (see below) allows the possibility for a longer list of exceptional circumstances that would be related to a particular hospice’s service area.

d. Timeframe exceptional circumstances for new hospice admissions in the third or later benefit period:
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.
The puzzling language is found in the CMS Q&As (dated March 25, 2011) (see the bolded text “in the answer below”). A reasonable reader would read that as language that limits the exception conditions to only two possibilities. We will try to get additional clarification on this.

**Hospice Face-to-Face FAQ**

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

**A:** The law requires that a hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient prior to the third recertification period and for every subsequent period. Unless one of the exceptional conditions described below is met, failure to meet the encounter timeframes results in a failure by the hospice to meet the patient’s recertification of terminal illness eligibility requirement…”

**The Actions of The Prudent Hospice™**

**ONE.** Because this requirement is so complex and the amount of information so copious, we understand that even The Prudent Hospice is feeling overwhelmed at this point. To make thing a bit easier, we are in the process of going back through all the information that we have sent you. We are updating as necessary and eliminating anything that is no longer correct based on the further clarifications. You will receive it next week.

**TWO.** Hospices have had 3 months to test out their processes. How is yours? Continue to work on it – the stakes for missed FFEs have now gotten much higher.

**THREE.** We still don’t know how hospices are supposed to work around CMS data sources that are incorrect but are working on recommendations to minimize risk. Stay tuned.