

## FACE-TO-FACE ANALYSIS RELATING TO FINAL HOME HEALTH PPS FINAL RULE 2015

On October 30, 2014, CMS issued its pre-released copy of the Final CY 2015 Home Health Prospective Payment System Rule ("Final Rule"). The Final Rule adopts many of the proposals found in the proposed regulations that were published by CMS earlier this year ("Proposed Rules"). Notably, the Final Rule also contains CMS's responses to many comments submitted by providers and other stakeholders, thus providing additional clarity on the intent behind some of the biggest changes.

Hall Render first reported that CMS was proposing changing the face-to-face requirement in its July 11, 2014 [article](#) on the Proposed Rules.

CMS proposed eliminating the face-to-face requirement in the Proposed Rules because claims were being rejected in large numbers, primarily due to failures to comply with the face-to-face narrative requirement. CMS recognized that these rejections had resulted in a recoupment of significant dollars and was placing a significant burden on not just the home health industry but also physicians, patients and others in the long term care continuum. In the Proposed Rule, CMS acknowledged the significant burden the face-to-face narrative has placed upon the home health industry. In response, CMS proposed to eliminate the physician's narrative component of the face-to-face requirements. With the narrative eliminated, CMS proposed that auditors could rely upon documentation in the patient's physician records to support the physician's certification that the patient was confined to the home and in need of the services ordered.

While encouraged by CMS's proposal to eliminate the narrative requirement, home health providers reserved judgment because they were concerned that a certification requirement tied to the physician's record could pose its own issues and concerns. For instance, how would the responsibilities be split (or shared) between the agency and the physician, and how would that responsibility be operationalized in the audit and recovery process? Not surprisingly, CMS received numerous comments about these issues during the comment period, and in the Final Rule, CMS offers answers that clarify what will be required by providers for face-to-face purposes.

Before reviewing some of the key comments in CMS's responses, it is worth noting that one of the most important comments CMS received was a comment from the Medicare Advisory Commission ("MedPAC"). MedPAC commented that the narrative *should continue* to be a requirement as part of the face-to-face requirement. MedPAC stated that this would allow time for MedPAC to consider alternatives. CMS did not follow MedPAC's recommendation and instead chose to eliminate the narrative requirement. However, CMS stated it will continue to assess this change and reserves the right to make further changes in the future. This means that MedPAC may very well propose alternatives in the coming years and encourage CMS to adopt the same. Providers should be aware that the changes made in this Final Rule may not be the last changes to the face-to-face requirements. We will likely see additional fine-tuning in the coming years.

CMS also received a large number of comments from home health providers and other industry stakeholders expressing support and encouragement to CMS for eliminating the narrative requirement. Despite this general support, a number of key criticisms and questions surfaced in the comments. For example, a number of commenters stated that placing responsibility for physician documentation on the agency was unprecedented and unworkable. CMS dismissed this concern and cited the DMEPOS regulations as an example of where one provider's reimbursement is dependent upon the documentation of another provider. Commenters expressed concern with a scenario where ultimately the agency would be responsible for providing documentation from the physician that supports certification or admission upon the request of CMS or its contractors. Despite this, CMS made clear that such a requirement *could* be interpreted to mean that providers would need to produce as part of an ADR or other audit the physician's documentation. On its face, this scenario is problematic and seems to confirm what the industry and stakeholders feared most about the Proposed Rule: that providers will be responsible for the content of a physician's documentation supporting the certification as part of the agency's record; that this documentation will be audited; and that home health agencies will be subjected to recoupment when the physician's supporting documentation is insufficient. Such a scenario may actually increase, not decrease, recoveries related to face-to-face requirements.

However, further responses from CMS suggest that agencies will have a greater ability to address the content of the physician's supporting documentation than they had to impact the physician's narrative. While CMS makes clear that documentation supporting the certification by the physician must be readily available for audit, CMS states that it expects the findings from the agency's initial assessment would be

communicated to the certifying physician and that the certifying physician "can incorporate this information into his/her medical record for the patient and use it...to support his/her certification of patient eligibility." This means the agency staff could conduct the initial assessment upon referral of a patient and forward the findings of that assessment for review by the physician. The physician will then be able to sign off on the certification and incorporate the agency's assessment into his or her medical record. The agency's assessment will then be used by the certifying physician to develop the plan of care and also *support the certification of patient eligibility*. In other words, the agency can generate, as part of its assessment, documentation supporting the patient is confined to the home and the need for care, and then the physician can incorporate it into his/her medical record and rely upon it. At that point, the agency will know the physician's record supports the certification.

This appears to be a significant improvement over the narrative because agencies could not draft the narrative for the physician before. It should be noted that physicians working with agencies must be willing to accept and incorporate an agency's assessment into his or her own clinical record. Physicians (and to the extent applicable, their employers) might recognize this as an opportunity to streamline this process, save time on the front end and ensure accuracy of records.

In light of this possibility, agencies should begin educating physicians on this change. Agencies' referring physicians will need to understand that additional, supporting information from the home health agency can be relied upon by the physician if reviewed and signed by the physician. Your referring physicians should understand how this will reduce their workload from the current narrative model.

As a matter of practice, agencies should consider expanding their intake assessment process so that it also generates an additional separate supplemental document that clearly states nurses' findings and how they support homebound status and medical necessity. This additional document will ultimately be transmitted back to the physician for the physician to incorporate into his or her medical record in support of the certification. This has the potential to allow agencies to ensure the physician's documentation supports the home health claims because they prepared it, an option the industry did not have previously. Because this makes it clear that the burden of face-to-face will be reduced, this clarification makes the elimination of the narrative a win for the home health industry, referring physicians and patients.

If you have any questions or would like additional information about the Final Home Health PPS Final Rule 2015, please contact:

- Robert Markette at (317) 977-1454 or [rmarkette@hallrender.com](mailto:rmarkette@hallrender.com);
- Allison Taylor at (317) 977-1421 or [orataylor@hallrender.com](mailto:orataylor@hallrender.com); or
- Your regular Hall Render attorney.

Please visit the Hall Render Blog at [hallrender.com/resources/blog](https://hallrender.com/resources/blog) for more information on topics related to health care law.