

HOSPICE FACE-TO-FACE QUESTIONS & ANSWERS

***Please note:** The responses provided to the questions below were developed with use of the final regulation governing hospice face-to-face/attestation requirements, as well as other official CMS hospice manuals. For three of the questions we have included the a direct response that was provided from CMS – these are referenced as “CMS Response” to minimize confusion.*

Question: Our software vendor is telling us that it is a new CMS requirement that the hospice certificate of terminal illness be a separate document from the plan of care; we currently combine the two and include the physician narrative on this document.

Will you please point us to more information on this change and clarify it if necessary?

Answer: Your software vendor may be referring to an earlier clarification provided by CMS in 2009 to NAHC, which is excerpted here:

“The certificate of terminal illness (CTI) and the plan of care (POC) are two distinct documents that have requirements specific to each. [CMS] regulations at 42 CFR 418.22 (Certification of terminal illness) and 42 CFR 418.56 (Condition of participation: Interdisciplinary group, care planning, and coordination of services) speak to these documents in very distinct ways. The concepts of the completion of these two documents are also very different. The POC is considered to be a group project (IDG) and the CTI is physician driven.

“Section 418.22 speaks to the CTI as a written certification that the hospice must obtain before it can submit a claim for payment. It does not refer to the CTI as being part of any other document (e.g. POC). At 42 CFR 418.22 (b)(2) it says that 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” as set forth in paragraph (d)(2) of this section. Note that it does not say that the clinical information and supporting documentation “include the certification”, nor does it say that it should “be filed in the medical record with the written certification as being part of the POC”. At 42 CFR 481.22(d)(d) it says that staff must “file written certifications in the medical record”. It does not say for the staff to file the written certifications, “as part of the POC”, in the medical record.

“Similarly, at 42 CFR 418.56 it speaks to the development of individualized written POCs and the furnishing of those individualized POCs to patients and their families. Nowhere in that discussion is there made mention of the CTI being part of the POC, that the CTI is included. Similarly, the description of the content of the POC at 42 CFR 418.56(c) is very detailed, and at no point is the CTI mentioned as being part of the POC.”

With the new regulations governing the hospice face-to-face encounter and attestation requirements CMS has provided guidance on new elements required to certify terminal illness. Prior to imposition of the face-to-face requirement, hospices must provide a signed certification or recertification that:

1. States that the patient is terminally ill, with a prognosis of 6 months or less if the illness runs its normal course;
2. Includes a written narrative either immediately prior to the physician's signature, or as a signed addendum. 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; and
3. Is accompanied by clinical information or other documentation supporting the diagnosis.

With the face-to-face encounter and attestation requirements, a fourth component has been added to the certification for patients entering the 3rd or subsequent benefit period on or after Jan. 1, 2011 – that of ensuring that a face-to-face encounter (and attestation of that encounter) for the purpose of gathering clinical evidence that supports continuing hospice eligibility is conducted by a hospice physician or hospice NP within the 30 calendar days prior to new benefit period.

If the hospice physician conducts the encounter, he/she must attest that the face-to-face encounter took place, the date on which it took place, and sign and date the attestation; the hospice physician conducting the encounter must also compose the narrative (using clinical findings from the face-to-face encounter to help determine continuing eligibility for hospice) and sign the CTI.

If the face-to-face encounter is conducted by a hospice NP, the NP must attest that the encounter took place, the date on which it took place, and sign and date the attestation. The hospice NP's attestation must include an affirmation that he/she provided the clinical findings to the physician who will be certifying terminal illness for use in determining continued eligibility for hospice care.

The face-to-face attestation and signature must 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.

CMS also clarifies in the regulatory issuance that the hospice has the option of putting both the face-to-face attestation and the narrative, with its accompanying attestation and signature, on the same page of the recertification. The face-to-face attestation must be separate and distinct from the narrative and its attestation. For consistency, CMS is requiring that the narrative and its accompanying attestation be above the physician signature, and the face-to-face attestation should be above its accompanying signature.

If the encounter attestation/signature and narrative/signature are part of the main certification document (as separately identifiable sections) rather than an addendum, CMS is suggesting (but not requiring) that the order be as follows:
Face-to-face attestation (if applicable), followed by the narrative attestation, followed by the physician signature.

QUESTION: Part of my ‘role’ in my new job with [...] was to do the recerts for our Hospice patients...as I understand from today’s conference I can do those only if I am the “the attending of record”? Did I understand this? Our medical director is the Hospice MD so I was going to be doing those essentially for her?

ANSWER: Certification of terminal illness for hospice benefits is based on the clinical judgment of the hospice physician and the individual’s attending physician (if the patient has one) or the medical director of the hospice regarding the normal course of the individual’s illness. No one other than a medical doctor or doctor of osteopathy can certify or re-certify a terminal illness. The attending physician may be a doctor of medicine or osteopathy or a nurse practitioner who is identified by the individual at the time of hospice election as having the most significant role in the determination and delivery of the individual’s medical care.

Nurse practitioners (NP) who are employed by the hospice or volunteer for the hospice may conduct the face-to-face encounter. In such cases the NP must complete the attestation requirements, which include affirming that:

- 1.) The NP has conducted the face-to-face encounter; and
- 2.) The NP has provided the clinical findings from the face-to-face encounter that support the terminal diagnosis to the certifying physician.

The regulatory explanation specifies that an NP is considered to be an employee of the hospice as long as the NP receives a W-2 form from the hospice or is volunteering for the hospice.

In terms of additional services of a medical nature that might be provided in conjunction with the face-to-face encounter, CMS has indicated that while the face-to-face encounter is not billable, if a physician provides reasonable and necessary non-administrative patient care, that portion of the visit would be billable. This would also apply in the case where the nurse practitioner is the patient’s designated attending physician, conducts the face-to-face encounter, and provides non-administrative patient care in conjunction with the face-to-face.

QUESTION: For patients whose recertification dates fall in the beginning of January 2011 (the first is on a Saturday), will face-to-face visits be required during the month of December for January recerts (prior to the rule being effective)? Is there a grace period in January to allow time for these visits to occur?

ANSWER: The requirement is in place effective Jan. 1, 2011; face-to-face visits for patients who will be moving into the 3rd or later benefit period on or after Jan. 1 must have an encounter completed within the 30 calendar days prior to reaching the subsequent benefit period. There is no grace period.

QUESTION: If a hospice physician, who is not the same physician that runs the IDG meeting, does the face-to-face visit and documents the visit in addition to communicating the visit results to an IDG member can the IDG physician use that information and compose narrative, sign attestation and recertify?

ANSWER: The physician who conducts the face-to-face encounter must compose the narrative and certify the patient as eligible for continuing hospice service. Recertification for benefit periods after the first must be completed by either the hospice medical director or physician member of the IDG.

QUESTION: What is the time-frame for the face-to-face visit for a patient admitted to hospice already in the third benefit period or greater?

ANSWER: Hospices are not required to meet the face-to-face encounter/attestation requirements for patients who entered the 3rd or later benefit period in 2010, and were recertified in 2010. The encounter/attestation requirements apply to patients who, on or after Jan. 1, 2011, enter the 3rd or later benefit period, to gather clinical information to support the continuation of hospice benefits into the next benefit period.

QUESTION: What if a patient is approaching his or her 3rd hospice benefit period but has not come anywhere near the 180 day mark? E.g., the patient used 20 days in one benefit period, went off hospice, used another 20 days in a second benefit period, and then went off hospice again. They are now going back on hospice on what would be their 3rd benefit period, yet they have only accumulated 40 days of hospice care. Is a F2F encounter required? (Read literally, the rule would seem to require the F2F, but do we know that this is what CMS intended?)

The face-to-face requirement tracks the benefit period status, regardless of the number of days of hospice care the patient has received.

CMS Response: We defined the 180th-day recertification to be the recertification which occurs at the start of the 3rd benefit period – that is, the benefit period following the certification for a second, 90-day benefit period, regardless of whether the beneficiary received a full 90 days of service in the second 90-day benefit period. We also require the face-to-face encounter at every subsequent recertification.

QUESTION: What if hospice claims are initially paid and then later denied on medical review? Alternatively, what if a claim is initially denied and later paid on appeal? Does the hospice have to go back and re-count the days? Is a Hospice legally and in good faith entitled to rely on the information in the CWF (assuming it is accurate and up to date when the hospice accesses it) to determine the day or benefit period count, even if that count later changes due to an appeal or claims review?

CMS Response: The face-to-face requirement is not based on days of care but on benefit periods. As noted in our Final Rule (75 FR 70441-70442), there are multiple ways for a hospice to verify benefit period.

QUESTION: What is the effect of not doing the F2F timely (or what if the hospice does the F2F but is a few days late)? Is the entire claim period denied? Just the number of days that the provider was late?

ANSWER: On a recent call a representative of one of the fiscal intermediaries indicated that at this time they are expecting to deny payment for care up until the face-to-face is conducted.

CMS Response: The face-to-face is one part of a complete recertification. A complete recertification is required for Medicare to cover the service. The claim would be denied for all days of care where a complete recertification is lacking.

QUESTION: Is the Hospice Face-to-Face requirements only for Medicare Hospice patients?

ANSWER: Yes, the requirement applies only to Medicare hospice patients.

QUESTION: The face-to-face requirements that become effective January 1, 2011, actually are for initial certs that began during 2010, correct? In other words, if a patient had an original cert in 2010 and their 180 days falls in mid-January, 2011, we will need a face-to-face, correct?

ANSWER: Yes. The face-to-face encounter/attestation goes into effect and applies to patients who enter the 3rd or later benefit period on or after January 1, 2011.

QUESTION: For clarification the physician may not bill Medicare for the face-to face visit on the hospice patient--the physician will bill the Hospice.

ANSWER: The face-to-face encounter is not separately billable to Medicare by the physician or by the hospice, as meeting these requirements are considered by CMS to be part of the hospice's administrative responsibilities related to certification/recertification. The physician would be paid by the hospice under the employment or contractual arrangement that is in force. However, if a physician provides reasonable and necessary non-administrative medical care, that portion of the visit would be billable, and payment should flow through the hospice to the physician for the medical care.

QUESTION: Do the hospice face to face physician encounters also need to take place every 60 days after the 180th day?

ANSWER: Yes – the face-to-face and associated requirements are applicable for the 3rd and each subsequent benefit period certification that occurs on or after January 1, 2011.

QUESTION: Are Hospices responsible for payment of the physician face-to face visit? Further, are Hospices responsible for payment for the transportation to the face-to-face visit?

ANSWER: As referenced above, costs associated with the face-to-face encounter are considered to be part of the hospice's administrative responsibilities related to certification/recertification, and therefore are not separately reimbursable. CMS does allow for the face-to-face encounter to occur in a location other than the patient's home provided that the travel would not exacerbate symptoms or otherwise jeopardize the patient's well being. CMS has indicated that if ambulance transport is required to bring

an individual safely to the MD or NP for purposes of the face-to-face encounter, the transportation would be considered payable under the hospice per diem rate.