



Hospice CARE Act Modifications to the Hospice Face-to-Face Encounter Requirement

The Medicare hospice benefit is provided in a series of benefit periods, in the following order: an initial 90 day period, a subsequent 90 day period, and an unlimited number of 60 day periods.

The beneficiary must be certified as being terminally ill prior to each benefit period. If the beneficiary revokes their hospice election, they forfeit the days remaining in that benefit period, and if they later elect to receive hospice care again, they begin at the start of the subsequent benefit period.

The ACA implemented a requirement that a hospice physician or NP have a face to face encounter to determine patients' continued eligibility for hospice "prior to the 180th day recertification and each subsequent recertification".¹ In interpreting this provision, CMS noted that the statute and regulations were structured around benefit periods rather than days of care, and therefore defined "the 180th day recertification" as being the recertification that occurs at the start of the 3rd benefit period (which is the first 60 day period), regardless of whether the beneficiary had actually received 180 days of hospice care.² A face-to-face visit is required prior to the start of this first 60 day period and every subsequent 60 day benefit period.

Because the need for face-to-face visit is based on the benefit period, hospices must research the hospice history of any new patient prior to admission, to determine whether a face-to-face visit must be done before the start of the benefit period. Hospices don't want to delay admission of a patient who is eligible and in need of hospice care, but it may take several days to be able to access the CMS databases to verify whether a new patient has received hospice care previously and requires a face-to-face visit, and then to arrange for that visit to occur.

Example 1: Mrs. Jones is certified as terminally ill and elects to receive care from Hospice A. She is recertified at the end of the first 90 day period and begins her second 90 day benefit period, but after 30 days of care in that benefit period (a total of 120 days in hospice) she revokes her election. One month later she again decides to receive hospice services and is recertified. She enters hospice at the beginning of the first 60 day period, and a face-to-face visit by a hospice physician or nurse practitioner is required prior to her re-admission, even though she has received less than 180 days of hospice care. In this case, Hospice A knows a face-to-face visit is required because they provided care to Mrs. Jones previously.

Example 2: Same as above, but after revoking during the 2nd benefit period Mrs. Jones moves to another state to be near her daughter. Six months later she is having a crisis with pain and other symptoms, and elects to receive hospice care from Hospice B. Hospice B has no history with Mrs. Jones but they must search the CMS databases to determine whether a face-to-face visit is required, and arrange for that visit to occur prior to admitting her. If Mrs. Jones elects hospice on a Friday, Hospice B may not be able to access the necessary CMS database until the beginning of the following week, since it is available on

¹ Social Security Act §1814(a)(7)(D)(i).
² See, 42 CFR 418.22(a)(4); 75 FR 70437 (Nov. 17, 2010)

Saturday morning but not that afternoon or any time on Sunday. When the CMS database can be checked, Hospice B will learn of Mrs. Jones's history with Hospice A, realize that a face-to-face visit is required prior to admission, and have to make arrangements for that visit to occur. Meanwhile, Mrs. Jones's access to necessary hospice care is delayed until the face-to-face visit can be done and her certification for hospice completed. By giving hospices up to 7 days to complete the face-to-face visit, and only in the limited circumstances of admitting patients who are new to a particular hospice but require a face-to-face visit because of previous hospice services received elsewhere, dying patients would not have their access to hospice care delayed.

Proposed Changes:

Expand the types of hospice employed professionals who can have a face-to-face encounter:

- Currently can be done only by a physician employed by or under contract with the hospice, or an NP who is employed by the hospice.
- We are proposing to also allow hospice employed physician assistants or clinical nurse specialists to provide these visits. This will facilitate timely provision of face-to-face visits.

Change the reference to “the 180th day recertification” to “the first 60 day period” in order to make the statute consistent with CMS’s interpretation. This change would have no actual effect and is simply an effort to make the statute consistent with CMS’s interpretation.

In the limited circumstances of a hospice newly admitting a patient who requires a face-to-face encounter because of past hospice experience with a different hospice, allow that hospice up to 7 days after the patient elects hospice to provide a face-to-face encounter, so that admission isn’t delayed.