Face-to-Face Requirements— FAQ

CMS Final Rule on Face-to-Face Exams Requires Operational Changes by DME Providers

AAHomecare has been working with CMS to provide clarification on the requirements for the new face-to-face exam requirements. CMS has provided clarification on some key questions that were asked by the AAHomecare Regulatory Council.

The Association and the Council continue to work with CMS and the Medical Directors on further guidance and will update members as additional information is received.

This document is presented to allow providers to further understand the face-to-face final rule and continue implementing changes in operational processes to meet the requirements of the regulation.

These are recommendations made to the best of AAHomecare’s knowledge as of July 12, 2013.

1. Items subject to a face-to-face encounter

Q.1.1. How do the requirements to have a face-to-face encounter and a written order prior to delivery (WOPD) apply in the case of supply items for primary DME, e.g., CPAP masks, furnished to beneficiaries before July 1, 2013?

A.1.1. The final rule requiring a face-to-face encounter between the beneficiary and a physician or Nurse Practitioner (NP), Physician Assistant (PA), or Clinical Nurse Specialist (CNS) for Specified Covered Items, is effective for orders written on or after July 1, 2013. DME items ordered on or before June 30, 2013, are not subject to the face-to-face encounter requirement. Items not on the list of covered items are not affected at this time.

Q.1.2. For beneficiaries who transition to Medicare on or after July 1, 2013, and who are using DME items on the Specified Covered Items list, may a supplier rely on a physician record documenting that a face-to-face encounter occurred and the beneficiary’s medical need for the items has not changed? In this case, the supplier cannot obtain a WOPD inasmuch as the beneficiary is already in possession of the equipment. The face-to-face and WOPD requirements are especially problematic in payer transitions because the beneficiary is already in possession of the Specified Covered Item and is unlikely to relinquish it during the time it takes to schedule, have and document the face-to-face encounter. In some cases, payer changes can be effective retroactively further adding to the compliance hurdles.

A.1.2. If a new order is required for a specified covered item after July 1, 2013 then the face-to-face requirements apply. This requirement only applies to orders for the list of specified covered items written on July 1, 2013 or later. For transitioning beneficiaries original order was after July 1, 2013, the supplier will need to have access to the original face-to-face documentation.

Q.1.3. Round two of the competitive bidding program begins on July 1, 2013. Will beneficiaries using items on the Specified Covered Items list that were furnished on or before June 30, 2013 and who transition to a contract supplier on or after July 1, 2013 (because their current supplier decides not to grandfather its existing patients) be required to comply with the face-to-face encounter and WOPD requirements? In this scenario, there could be a large number of beneficiaries changing providers at the same time. Imposing the face-to-face encounter and WOPD requirements under these circumstances has the potential to disrupt patient care and would be impracticable for many patients, especially those using life-sustaining equipment such as oxygen.
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A.1.3. Program Integrity Manual Chapter 5 Section 5.2.4 requires a new order if there is a new supplier. If a new order is required for a specified covered after July 1, 2013, then the face-to-face requirements apply. These requirements only apply to written order for the list of specified covered items completed on or after July 1, 2013.

Q.1.4. It has been our experience that beneficiaries tend to change suppliers in competitive bidding areas (CBA). If a beneficiary changes suppliers in a CBA after July 1, 2013 for reasons other than grandfathering, e.g., dissatisfaction with the existing contract supplier, how do the face-to-face and WOPD requirements apply?

A.1.4. Program Integrity Manual Chapter 5 Section 5.2.4 requires a new order if there is a new supplier. If a new order is required for a specified covered after July 1, 2013 then the face-to-face requirements apply. These requirements only apply to written order for the list of specified covered items completed on or after July 1, 2013.

Q.1.5. AAHomecare is aware of an increase in bankruptcy filings and DME company closures. How do the face-to-face and WOPD requirements apply in the event of a bankruptcy or facility closure? In these situations, there are many beneficiaries changing providers at one time. Documentation of a previous face-to-face will not likely be available from providers who are out of business.

A.1.5. Program Integrity Manual Chapter 5 Section 5.2.4 requires a new order if there is a new supplier. If a new order is required for a specified covered after July 1, 2013 then the face-to-face requirements apply. These requirements only apply to written order for the list of specified covered items completed on or after July 1, 2013.

Q.1.6. The face-to-face encounter and WOPD requirements apply to DME Items that CMS identifies as Specified Covered Items. Specified Covered Items are listed in the November 16, 2012 edition of the Federal Register. That list does not include items under HCPCS codes E1390 and K0738. What is the status of these items with respect to the final rule?

A.1.6. The final rule states that CMS will publish annual updates to the list of Specified Covered Items in the Federal Register. Until then, the final rule applies to the Specified Covered Items in the November 16, 2012 Federal Register, and suppliers are not required to have documentation of a face-to-face encounter or a WOPD for DME items that are not on that list, except as may be required under an applicable NCD or LCD. The next annual update will take place in 2014.

2. Documentation of the face-to-face encounter

Q.2.1. What does CMS expect to see in the documentation of the face-to-face encounter? Is documentation of the encounter valid if it does not identify the item specifically or class of item. For example, is CMS looking for hospital bed to be stated in the face-to-face documentation? Is CMS looking for the type of hospital bed (i.e. semi-electric or manual) in the face-to-face documentation?

A.2.1. Section 42 CFR 410.38(g)(3)(i)(B) specifies that documentation of a face-to-face encounter must show that the physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist conducted a needs assessment, evaluated, and/or treated the beneficiary for a medical condition that supports the need for the Specified Covered Item ordered. The name of the item or specific type of item does not need to be explicitly documented in the face-to-face encounter. However, the face-to-face encounter must be documented in the medical record in support of the item ordered.
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Q.2.2. AAHomecare strongly recommends that CMS develop documentation guides or tools for physicians in order to assist them in performing and properly documenting the face-to-face encounter. CMS should permit physicians to use the guides and recognize them as a legitimate component of the medical record.

A.2.2. As CMS noted in the preamble to the November 16, 2013 final rule, we “do not prohibit the use of templates to facilitate record keeping. CMS does not endorse or approve any particular templates. A physician or practitioner may choose any template to assist in documenting medical information.” Consequently, the use of a template or documentation guide is permissible. However, in the preamble we also reiterated our concern that “some templates provide limited options and/or space for the collection of information such as by using “check boxes,” predefined answers and limited space for information.” CMS discourages the use of such templates.

Q.2.3. Section 410.38(g)(4)(i) specifies the elements that must appear on the WOPD for a Specified Covered Item. The WOPD is not required to contain a patient diagnosis. However, the preamble to the final rule states that CMS expects to see a diagnosis in the documentation of the face-to-face encounter. It is possible that the documentation might contain signs and symptoms without a diagnosis or the diagnosis is inconclusive when the face-to-face encounter occurs. In this case, the lack of a diagnosis should not affect the validity of the documentation if the record otherwise meets the requirements of §410.38(g)(3)(B), especially because many DME items are not tied to a specific diagnosis.

A.2.3. The requirements of the final rule are satisfied if documentation of the face-to-face encounter shows that a physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist conducted a needs assessment, evaluated, and/or treated the beneficiary for a medical condition that supports the need for the Specified Covered Item ordered and the WOPD meets the requirements of §410.38(g)(4)(i). A specific diagnosis is not required. However, as CMS stated in the preamble, in areas where a face-to-face is required by the NCD or LCD the documentation requirements [of the final rule] are in addition to those documents in the NCD or LCD. The face-to-face should comply with the requirements of the NCD or LCD and its occurrence must be documented by a physician.

Q.2.4. If the WOPD is missing a required element, may the supplier send the physician a corrected form for his or her signature?

A.2.4. CMS’ longstanding policy as reflected in the Program Integrity Manual (PIM), IOM 100-8 §5.2.3 has been to permit someone other than the physician to complete the detailed description of the item in the detailed written order as long as the physician reviews and signs the order. This policy only applies to the detailed description, and does not apply to other required information on the order.

Q.2.5. Please confirm that a staff physician working for a skilled nursing facility or other inpatient facility may perform the face-to-face encounter and order a Specified Covered Item.

A.2.5. Section 6407 of the Accountable Care Act (ACA) requires that a physician or physician assistant, nurse practitioner, or clinical nurse specialist perform the face-to-face encounter. A staff physician or in house physician working for an inpatient facility is a physician under the statute and final regulation. The physician should be enrolled in the Medicare program.

Q.2.6. If a Specified Covered Item is ordered on discharge from a hospital or other inpatient stay and a hospitalist or staff physician performs and documents the face-to-face encounter; can the treating physician sign the WOPD?
A.2.6. A treating physician who orders a Specified Covered Item for a beneficiary following an inpatient stay may rely on the record of a face-to-face encounter performed by a hospitalist or in-house hospital physician if the encounter occurred within the six-month period prior to prescribing the equipment.

Q.2.7. In the scenario under question 2.5., above, if the staff physician performs the face-to-face encounter and furnishes the supplier with a WOPD for a Specified Covered Item such as oxygen, which requires a CMN, may the physician treating the beneficiary post-discharge complete the CMN?

A.2.7. This regulation does not change the requirements or timing of the CMNs. If a facility staff physician performs the face-to-face encounter and gives the supplier the WOPD for a Specified Covered Item, the physician treating the beneficiary post-discharge may complete and sign the CMN. In this case, the treating physician may rely on the staff physicians’ record of the encounter in the same way treating physicians currently rely on their findings following a hospital stay.

Q.2.8. When a physician assistant, nurse practitioner, or clinical nurse specialist performs the face-to-face encounter, how soon must the physician sign or co-sign the record documenting the encounter?

A.2.8. The final rule does not contain a specific deadline for a physician to sign or co-sign the record of a face-to-face encounter performed by a nurse practitioner, physician assistant or clinical nurse specialist. But the supplier may not deliver the equipment until the physician reviews and signs the record of the encounter.

Q.2.9. The face-to-face encounter and WOPD for Specified Covered Items are designed to ensure that beneficiaries receive only medically necessary items. If a beneficiary has not had a face-to-face encounter when the Specified Covered Item is ordered, or the face-to-face encounter does not meet the requirements of the final rule, can the supplier use an advance beneficiary notice (ABN) to inform the beneficiary that the Specified Covered Item will not be covered by Medicare.

A.2.9. The preamble states that “detailed face-to-face documentation is required to ensure that the item of DME is medically necessary and appropriate for an individual beneficiary.” 77 Fed. Reg. 68891 at 69153 November 16, 2012). If the face-to-face encounter has not taken place, or the encounter that took place does not meet the requirements of the final rule, medical necessity for the Specified Covered Item has not been established. If the beneficiary still wants the item, a supplier may use an ABN to notify the beneficiary that he or she will have to pay for the item out-of-pocket. CMS however does not allow for blanket ABNs.

Q.2.10. The preamble states that the WOPD does not have to contain instructions for using a Specified Covered Item, however CMS expects that “necessary and proper usage instructions” will be provided to the beneficiary of the caregiver. Please confirm that the supplier is required to provide instruction on the use of an item of DME or to ensure that a qualified individual provides that instruction. Consequently, the medical record typically would not contain “necessary and proper usage instructions” for an item of DME.

A.2.10. That is correct, under the supplier standards, 42 CFR 424.57(c), the supplier is responsible for delivering the DME item and instructing or ensuring that a qualified individual instructs the beneficiary or caregiver on its use. However from the proposed rule the requirement to include these instructions in the written order has been removed.
3. Communicating the face-to-face encounter to the supplier

Q.3.1. Section 410.38(g)(5)(i) states that a supplier “must maintain the written order and the supporting documentation [i.e., a record of the face-to-face encounter] provided by the physician . . . and make them available to CMS for 7 years from the date of service . . . [.]” AAHomecare interprets this language as requiring the supplier to obtain documentation of the face-to-face encounter when he receives the WOPD and to maintain the documentation for a period of 7 years. In other words, the supplier must obtain and the physician or other practitioner must give the supplier the documentation before the supplier furnishes the Specified Covered Item to a beneficiary. Otherwise, the supplier cannot ascertain whether all of the requirements of the final rule have been met.

The preamble supports this conclusion stating, “We also note that this documentation must be made available to suppliers to allow them to ensure that all of the requirements are met.” 77 Fed. Reg. at 69154. Clearly, this must occur before the item is delivered to the beneficiary because the WOPD must be based on a documented face-to-face encounter that is communicated to the supplier. The supplier will not be paid and may not bill a beneficiary for a Specified Covered Item without an ABN unless he can ascertain that the requirements of the final rule have been met before he furnishes the Item to the beneficiary. The preamble also states that a physician’s certification on the WOPD of the date the face-to-face encounter occurred would be inadequate to demonstrate the beneficiary’s medical need for the Specified Covered Item. Specifically, the preamble states, in part:

[A] verification of a date added to a written order does not prove that an adequate face-to-face occurred. Detailed face-to-face documentation is required to ensure the item of DME is medically necessary and appropriate for the individual beneficiary.

A.3.1. The supplier must be able to know whether all of the requirements under the final rule have been met, before the item is delivered. Consequently, the supplier must request, and the physician must provide, documentation from the beneficiary’s medical record of the face-to-face encounter with the transmission of the WOPD. As we noted in the preamble, “[CMS] believe[s] that by removing the 30 days after the order is written timeframe for the face-to-face encounter, the supplier will be able to know before delivery if all the requirements have been met.” 77 Fed. Reg. at 69154. Our intent in removing the ability for the face-to-face encounter to occur within 30 days following the written order was to ensure that suppliers are “afforded more protection as all documentation will be available at the time of the order.”