



Michael D. Maves, MD, MBA, Executive Vice President, CEO

December 23, 2010

Donald Berwick, MD
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Ave, SW
Washington, DC 20201

Dear Dr. Berwick:

The American Medical Association (AMA) is writing to you today to draw your attention to Section 6407(a) of the Affordable Care Act (ACA), which requires that physicians certifying home health services document a face-to-face encounter with a patient. Pursuant to the home health final rule published November 17, 2010 by the Centers for Medicare & Medicaid Services (CMS), this requirement will go into effect on January 1, 2011 (CMS-1510-F). We are deeply concerned that CMS has done little outreach to physicians affected by this requirement, and unless CMS postpones enforcement of this requirement, patients and physicians could be negatively impacted. **Therefore, we strongly urge CMS to postpone by six months the enforcement of Section 6407(a).**

The AMA, as well as several other stakeholders, sought significant revisions to CMS's proposed rule (CMS 1510-P) implementing Section 6407(a) (amended by section 10605). We are pleased that CMS made some changes to the final rule, such as adopting our recommendation to extend the period of time in which the face-to-face encounter could occur to 90 days prior to, or 30 days after, the start of home health services. However, we remain very concerned that enforcing the January 1, 2011 deadline would negatively affect patient care as CMS has not adequately informed or educated physicians and patients on this policy.

Under the final rule, a physician must document that the physician or an applicable non-physician practitioner has had a face-to-face encounter with the patient and the date of that encounter. The physician must also document how the patient's clinical condition supports a homebound status and the need for skilled services. The documentation must be a separate and distinct section of, or an addendum to, the certification. Physicians need time to understand how to comply with this new requirement, and CMS must provide adequate outreach to physicians and patients prior to enforcing this requirement.

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The AMA appreciates the outreach CMS has done on other program integrity provisions stemming from ACA, such as the enrollment requirements for referring and ordering physicians, and the claims submission deadline of December 31, 2010. Similar outreach is needed to ensure physicians and patients are aware of the new home health requirements. The *Medicare and You 2011* edition does not, for example, address the need for a face-to-face physician encounter. CMS agrees in the final rule that there is a need to “educate physicians regarding this new law,” and proposes to “do so via open door forums, listserv announcements, and Medlearn articles.” The limited amount of outreach CMS has done so far has only occurred within the past few weeks. We know from considerable experience that at least six months is needed to conduct outreach to physicians on new policies. Furthermore, physicians are also facing a host of other new Medicare requirements that become effective January 1, 2011. The AMA suggests that CMS take the time to adequately institute sufficient physician and patient education prior to implementation.

Unless enforcement of this policy is delayed for six months, home health agencies could begin refusing patients who do not have documentation of a physician encounter. This could result in reduced access to home health care services, and increased use of hospitals and nursing homes. Delaying enforcement will allow CMS the time needed to ensure that physicians are educated regarding the new requirements, and contractors are adequately prepared to process claims according to the new policy. **Therefore, we urge CMS to increase outreach to physicians and patients regarding the face-to-face documentation requirement, and to delay enforcement of the January 1, 2011 deadline by six months.**

We appreciate CMS’s consideration of these concerns. Should you have any questions please contact Mari Savickis at mari.savickis@ama-assn.org.

Sincerely,

A handwritten signature in cursive script, reading "Mike Maves", written in black ink on a white background. The signature is positioned to the left of a vertical red line.

Michael D. Maves, MD, MBA