

## **CMS Response to Public Comments Received for CMS-10311**

The Centers for Medicare & Medicaid Services (CMS) received comments from physician groups, physicians and nurses related to CMS-10311. While comments discussed the face to face requirement, there were zero comments on the time and cost burden of this PRA. Below is the reconciliation of the comments.

### **Comment:**

Twenty-five commenters stated that the face to face requirement, in general, causes a hardship for home health agencies. Commenters stated that the face to face requirement is poorly defined and it's almost impossible to fulfill acceptable face to face documentation. Additionally, commenters stated that complying with the face to face requirement is very time consuming and that HHAs are being penalized for physicians not documenting what's needed to ensure reimbursement for care.

### **Response:**

CMS acknowledges the comments received on the face-to-face requirement. On March 23, 2010, the Affordable Care Act of 2010 (Pub. L., 111–148) was enacted. Section 6407(a) (amended by section 10605) of the Affordable Care Act amends the requirements for physician certification of home health services contained in sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Social Security Act (the “Act”) by requiring that, prior to certifying a patient as eligible for Medicare’s home health benefit, the physician must document that the physician himself or herself or a permitted non-physician practitioner has had a face-to-face encounter (including through the use of tele-health services, subject to the requirements in section 1834(m) of the Act). Therefore, the face to face requirement is not a regulatory or sub-regulatory requirement, but a statutorily-mandated requirement.

Effective January 1, 2015, in order to comply with the face-to-face requirement, a physician simply has to attest (as part of the overall certification of eligibility) that a face to face encounter occurred with an allowed provider type, within 90 days prior to or up to 30 days after the start of home care, and that the encounter was related to the primary reason for home care. The physician must also document the date of the encounter on the certification form. We accounted for the burden associated with an HHA revising its certification form to include this attestation statement as well as the time it would take for a physician to note the date of the encounter. We remind commenters that sections 1814(a)(2) and 1835(a)(2) of the Act have always required that certifications be accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations. This means that physicians certifying home health eligibility should have always been able to provide documentation that supports why the physician certified the patient as eligible for home health services in order for Medicare to ensure that claims are paid appropriately. Moreover, physicians/acute/post-acute providers should be sharing pertinent

information with the HHA about the patient's health status that lead to the referral for home health care.