



March 28, 2016

Katherine Ceroalo
Bureau of House Counsel, Regulatory Affairs Unit
New York State Department of Health
ESP Tower Building, Room 2438
Albany, NY 12237

RE: Amendments to Sections 763.7 and 766.4 of Title 10 NYCRR (Home Care Agencies to Obtain Written Medical Orders from Physicians)

Dear Ms. Ceroalo:

On behalf of the Home Care Association of New York State (HCA), I am submitting comments on the Notice of Proposed Rulemaking regarding the Department's amendment of Sections 763.7 and 766.4 of Title 10 NYCRR (Home Care Agencies to Obtain Written Medical Orders from Physicians), published in the February 10, 2016 *State Register*.

HCA is a statewide association representing nearly 400 health care providers, organizations and individuals involved in the delivery of home and community-based care services to over 300,000 Medicare and Medicaid patients throughout New York State. HCA's provider members comprise the continuum of home care services, including Certified Home Health Agencies (CHHAs), Long Term Home Health Care Programs (LTHHCPs), Licensed Home Care Services Agencies (LHCSAs), Managed Long Term Care (MLTC) plans, Hospices and waiver program providers. HCA's home care providers are sponsored by hospitals, nursing homes and free-standing nonprofit, public and proprietary agencies.

HCA members were part of a Home and Community-Based Care Workgroup created in 2013 by the New York State Legislature and Governor to recommend regulatory changes/improvements to facilitate the delivery and reimbursement of home care services that resulted from the state's Medicaid Redesign Team (MRT) initiatives, particularly in the new managed care paradigm.

One of the prime areas identified by the Workgroup, consistent with input from HCA and other provider associations was the need to incorporate flexibility in the timetable/process for home care agencies to obtain copies of physician/practitioner signed orders for home care services. Because of the MRT's focus on dramatically shifting the locus of patient care from institutional to home care settings, flexibility in the regulations was deemed particularly necessary to address what were already longstanding difficulties that home care providers encountered in securing from physicians their timely signatures on orders. In addition, this flexibility would further alleviate the significant cost impact related to providers' inability to submit Medicaid claims timely due to Medicaid billing deadlines that lack an exception for the lateness of such physician signatures beyond the home care provider's control.

Appreciation & Overview

First and foremost, ***HCA greatly appreciates and overwhelmingly supports*** the Department's proposed rulemaking to amend Sections 763.7 and 766.4 of Title 10 NYCRR. We applaud the Department for working with the home care community, and in its responsiveness in formulating and submitting this proposal.

As the Department referenced in the beginning of the proposed rule, signed medical orders by an authorizing practitioner are required for the provision of Medicaid home care services, under Sections 763.7 and 766.4.

The proposed rule would essentially align state rules for signed physician orders for home care services with federal Medicare rule; a change HCA strongly endorses and would have a significant, positive effect on home care.

Federal rules required physician orders to start or modify home care services (as do state rules); however Federal rules require that signed copies of the orders be secured *before billing*, for which Federal rules also permit a 30-day window. State rules have required signatures within 30 days, and allow up to 90 days from date of service to bill.

While services may (and most frequently) commence upon receipt of the practitioner's verbal order/authorization, further documented by the home care provider in the patient's medical record, the current state regulations also require the practitioner's signature on his or her order to be filed in the record within 30 days of admission to the home care agency or prior to the agency's billing, whichever is sooner. (Note: Without the ability to commence services upon verbal documented orders, the system would freeze, impairing patient access to care, precluding appropriate transition of patients from hospitals to home and increasing Medicaid costs.)

However, despite diligent efforts by CHHAs, LTHHCPs and LHCSAs, the agencies have no jurisdiction to require timely physician signature and return of the signed order.

HCA regularly hears from providers how delays in physician signatures are prevalent, problematic, costly and highly burdensome in their agencies, and of the lack of any leverage in obtaining the signed copies. Unfairly, the home care provider – not the physician – is then held responsible for the compliance on late signatures of submissions, both procedurally and with reimbursement liability.

Further complicating matters are three additional factors: 1) state requirements that physician signatures be provided within 30 days of the start of care (and upon required renewal periods), risking both compliance and financial liability to the home care agency on account of the *physician's* time delinquency; 2) state regulations precluding a provider from billing for services prior to the *signed* order; and 3) the Department's edit system for Medicaid billing, requiring that claims for services must be submitted within 90 days of the date of service.

While this edit system includes necessary exemptions for certain circumstances beyond the control of a provider, the lack of timely physician-provided signatures is not currently included among these exemptions.

This leaves home care providers with a double-jeopardy situation: first, a 30-day window for physicians to provide their signatures, risking provider compliance and reimbursement loss; and second, a total 90-day deadline from the service date to have physician signature and, following, the preparation submission of the claim for billing.

As a result, home care providers throughout the state have reported incurring millions dollars in unfunded costs by hiring additional staff and couriers assigned only to obtain receipt of the signed orders by the appropriate practitioner in an effort to get the order and submit claims within a narrow window of time, or else lose the opportunity to bill, as well as from the inability to bill for services provided in good faith, medically needed by the patients and upon the physician's documented verbal order, when the signature is not timely provided, the 90 day Medicaid billing period is exceeded, and the Medicaid billing system's

absence of an approved exception billing code (recognized by the Department) cases where the deadline is passed exclusively as a result of late physician orders.

HCA and our provider members have continuously stressed that without the Department's help in amending state regulations as well as creating an approved exception code, providers will continue to face undo procedural, compliance and financial hardship.

This change would also align with Medicare rules which permit home health agencies up to one year from the date of service to bill and procure signed physician orders.

Recommendations

HCA supports *expeditious* adoption and implementation of the Department's notice of proposed rulemaking.

Additionally, in conjunction with this rulemaking, we also offer the following further recommendations:

- HCA also urges the Department to accelerate its issuance of the separate guidance which includes details for a new exception code to allow home care agencies to bill for ordered services when the ordering physician signatures are not received in the Medicaid 90 day timetable.
- HCA requests that the Department ensure that OMIG incorporates the rule change into its own compliance assumptions, audit standards and procedures.
- Provide critical support for health information technology (HIT) investment in home care, which would greatly facilitate time information and record exchange between physicians, home care and other critical, partnering providers and health plans. The virtual absence of federal/state investment in home care HIT demands that the state prioritize such funding.

HCA appreciates the Department's issuance of this critical proposed rule and we ask your consideration of these comments and recommendations. Please contact me at (518) 810-0661 or pconole@hcanys.org if you have any questions or need further information in relation to our comments.

Sincerely,



Patrick Conole
Vice President of Finance & Management