



8515 GEORGIA AVENUE, SUITE 400
SILVER SPRING, MARYLAND 20910-3492
301 628-5000 • FAX 301 628-5001
www.NursingWorld.org

August 26, 2013

Honorable Marilyn Tavenner, MHA, RN
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-1590-P / RIN 0938-AR11
PO Box 8013
Baltimore, MD 21244-8013

Re: DME Face-to-Face Encounters Rule

Dear Administrator Tavenner:

As the only full-service professional organization representing the interests of the nation's 3.1 million registered nurses, ANA is privileged to speak on behalf of its state and constituent member associations and individual members. Thank you for your June 27th decision to postpone the enforcement of the DME face-to-face requirement to October 1, 2013. However, our members remain extremely concerned that the planned implementation of the final durable medical equipment (DME) face-to-face encounter rule will reduce access to care for their Medicare patients.

Since 1997, APRNs have been authorized by the Secretary to order durable medical equipment. Ordering durable medical equipment for their patients is clearly an activity that is within the scope of practice of APRNs. In this particular context, nurse practitioners (NPs), clinical nurse specialists (CNSs) and certified nurse-midwives (CNMs, not named in this provision) are all well-qualified to make the appropriate assessment to order DME. Many of our members have conveyed their strong beliefs that the planned implementation of the final rule on October 1st will reduce their Medicare patients' prompt access to needed DME services with little or no effect on the incidence of fraudulent procurement or medically unnecessary provision of DME.

We are aware of, and agree with, the Centers' concern about reducing the incidence of fraud and abuse in the Medicare program, and the particular focus on orders for DME. The primary thrust of Section 6407 of the Affordable Care Act is to "document" a face-to-face encounter between a Medicare Part B patient and the DME prescribing clinician. We concur with this requirement.

However, CMS's requirement of a physician certification is an additional unnecessary clerical function. We would ask the Centers' for **permanent delay** to the enforcement of a physician documentation of the face-to-face encounter conducted by a nurse practitioner, physician assistant or clinical nurse specialist. ANA believes that a more logical way to approach documenting the face-to-face patient-clinician encounter would be a one-time only certification by the prescribing clinician. APRNs and PAs are educated and qualified to self-document for the face-to-face requirement. The addition of a physician signature adds an unnecessary step and will delay the provision of needed medical equipment to Medicare beneficiaries, especially in rural and underserved areas.

When the Medicare Payment Advisory Commission discussed the need for a face-to-face encounter, Commissioner William Scanlon questioned the need for a physician sign off. Dr. Scanlon stated that nurse practitioners were qualified to determine the need for Medicare services and that Medicare does not believe that “the integrity of physicians is higher than the integrity of nurse practitioners.” ([MedPAC public meeting transcript 1/14/2010](#), p. 313)

As a possible alternative, if the physician documentation requirement cannot be permanently delayed, ANA recommends that **CMS accept an encounter form that includes physician information** before an order is sent to a supplier.

Most importantly, ANA is requesting the **removal of relatively inexpensive and frequently prescribed items** such as home blood glucose monitors, home oxygen therapy, standard wheelchairs and other safe patient handling items from the DME list requiring physician documentation. In fact, if the redundant certification cannot be waived entirely, we recommend that this requirement should be limited to items of DME documented to have been subject to abuse and to those items that cost Medicare at least \$1000 per month rental or \$5000 purchase, please see the attached list of items. We believe this course of action is entirely within the purview of CMS.

ANA sincerely appreciates this opportunity to share our view and expertise on this important issue. We would be pleased to discuss these issues further if you should have any questions. Please feel free to contact ANA government affairs director, Rose Gonzalez at 301-628-5098 or at rose.gonzalez@ana.org.

Sincerely,



Marla J. Weston, PhD, RN, FAAN
Chief Executive Officer

cc: Karen A. Daley, PhD, MPH, RN, FAAN
President