

MEMORANDUM

To: All Clients

From: David Werfel, Esq.
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Date: December 20, 2007

Subject: Beneficiary Signature Requirement – Suggestions

BACKGROUND

Medicare regulations, specifically 42 C.F.R. §424.36, require a patient's signature on a claim, unless the patient has died or the ambulance provider/supplier can qualify for one of a number of listed exceptions. Generally speaking, those exceptions involve the ambulance service getting a signature on the patient's behalf from an authorized representative.

On November 27, 2007, CMS published a Final Rule for physicians and other suppliers, which made a number of significant changes to the patient signature requirement:

a. New Exception for Emergency Transports (42 C.F.R. §424.36(b)(6)) – For emergency transports with dates of service on or after **January 1, 2008**, you will be permitted to submit a claim—and answer “Yes” to the signature question on electronic claims—as long as you obtain the following documentation:

- Statement from crew member (i) that the patient was unable to sign and (ii) that no legally authorized person was available or willing to sign on the patient's behalf;
- Documentation of (i) the date and time of the transportation and (ii) the name and location of the facility that received the patient; and
- Documentation from the receiving facility of (i) the name of the patient and (ii) the date and time the patient was received.

b. New Requirement to Use “Reasonable Efforts” – CMS also made a change to 42 C.F.R. §424.36(b)(5), one of the existing exceptions to the patient signature requirement. Under 42 C.F.R. §424.36(b)(5), an entity which furnished services to a Medicare patient is permitted to sign the claim on the patient's behalf, if the patient was unable to sign and the entity was unable to obtain a signature on the patient's behalf from another authorized person. The change is that CMS will now require the furnishing provider to use “reasonable efforts” to obtain a signature from one of the other authorized persons before being permitted to sign the claim (itself) on the patient's behalf.

c. New Interpretation of 42 C.F.R. §424.36(b)(5) – CMS also offered a new interpretation of which entities may use the exception in 42 C.F.R. §424.36(b)(5). The regulation uses the phrase “provider or of the nonparticipating hospital”. However, the CMS Manual and various Carrier guidance have previously indicated that this section was applicable to both providers and suppliers. As a result, ambulance suppliers have relied upon this exception to submit claims to Medicare whenever their crews documented that the patient was unable to sign and that no other authorized person was available to sign on the patient’s behalf at the time of transport. In the Final Rule, CMS stated its belief that 42 C.F.R. § 424.36(b)(5) applied only to institutional providers, such as hospitals. **Thus, CMS now believes an ambulance supplier is prohibited from submitting a claim to Medicare unless and until the supplier obtained the signature of the patient or their representative.** If an ambulance supplier is unable to get the signature of the patient or an authorized representative, CMS now believes that the ambulance supplier should bill the patient.

In this memo, we are providing a number of suggestions to help you comply with the new signature requirement. Several of these suggestions were developed in response to questions we have received regarding the new signature requirements. Others were suggested to us by different companies, based on what they believe will work for them in their operating environment.

We understand that many (if not most) of these suggestions may not work for your particular circumstances. Part of what we hope to accomplish on today’s call is to “vet” these suggestions to get a feel for those that people think are impractical, those that might work in certain operating environments better than others, those that should be incorporated into “best practices”, etc.

SUGGESTIONS FOR EMERGENCIES

1. Change your Trip Report to include a section for obtaining the signature of a representative of the receiving facility. To fully comply with the new exception, we previously suggested the following language: “I am a representative of the receiving facility. I certify that the above named patient was received by this facility on the date and time set forth above.”
2. If your crew does not obtain a signature from a representative at the receiving facility at the time of transport, you can still meet the new exception if you obtain “secondary verification”. The new exception in the Final Rule provided some examples of acceptable documentation, including a signed copy of your trip report (obtained after the fact), hospital registration/admission sheets, patient medical records, a hospital log, etc. However, CMS believes any secondary documentation must be signed by a representative of the hospital. Therefore, look at the types of records used by the various hospitals in your area to see which records would qualify as secondary verification. Then make a list of the acceptable forms, so that, when your staff calls the hospital, they can ask for the specific documents they need.

3. Consider working with the hospitals to prepare a new hospital form, which you can then obtain from the hospital and use as secondary verification whenever needed. Hospitals may be reluctant to give out patient's medical records, for example, citing privacy concerns. If you develop a simple form designed specifically to meet the new exception—which requires only the patient's name, and the date and time they were received at the hospital—hospitals may be more willing to cooperate.

SUGGESTIONS FOR NON-EMERGENCIES (& EMERGENCIES)

1. Change your Trip Report to include a section for obtaining the signature of a representative of either the discharging or receiving facility. **Reminder:** in this case, the signature is being made on the patient's behalf, not just to confirm receipt of the patient. Therefore, you need different language. Here, the language we previously suggested was: "I certify that our institution has furnished care or other services to the above named patient in the past. In the event you are unable to obtain the signature of the patient or another authorized representative, I hereby sign on the patient's behalf, in accordance with 42 C.F.R. §424.36(b)(4)." Since some facilities may refuse to sign where there is a reference to a regulation you could use the above deleting "in accordance with ...". Some other people have told us that facility representatives think that signing this might make them responsible for payment. Therefore, you can include a sentence such as "this signature is not an acceptance of financial responsibility for the patient".
2. You try to obtain a PCS for most non-emergency transports. Change your PCS to include the language for the facility representative to sign on the patient's behalf.
3. Create a laminated card to be kept in the vehicles, which contains a list of the people who are permitted to sign on the patient's behalf. This will help crews determine who is permitted to sign on the patient's behalf (e.g. spouse vs. witness). Also, facility staff may not be aware that Medicare permits them to sign on the patient's behalf.
4. For scheduled trips, see if the hospital, SNF or other facility will obtain the patient's signature on your form ahead of time. Your crews could then pick it up at the time they pick up the patient.
5. When you can not get the signature of a patient or representative at the time of transport, you will need to get the signature after the fact. If the facility is willing to sign on the patient's behalf, periodically send them forms for all of transports for which you need signatures.
6. When you need signatures from a large number of patients at a single SNF, consider sending someone over to the SNF to visit each patient to try to get the signature. For example, you could go over once a month with a list of all the patients at that facility.

GENERAL SUGGESTIONS

1. Change the language on your lifetime signature form to cover "all services provided by your company, whether in the past, now or in the future".

2. It is important you educate your crews about the new requirements, and stress the need for them to try to get the patient or a representative's signature at the time of transport.
3. Many companies have a process that reviews the paperwork returned by crews for completeness. If you have not already done so, include the patient or representative signature as part of your Q/A process. The idea is to identify crews that fail to get a signature on a high percentage of trips, so that they can be reminded of the need to get signatures.
4. Include the signature of the receiving facility as part of your Q/A process. The idea being to identify those crews that fail to get a signature from the receiving facility on a high percentage of trips, so that they can be reminded of the need to get the signature.
5. If you have a paperwork bonus for crews, consider eliminating the patient signature as one of the required fields. Our concern is eliminating any possible incentive for crews to forge signatures.
6. Contact your software vendor, to make sure they (a) know about the new signature requirements and (b) are updating their software to make whatever changes are needed to help you comply.
7. Include a checkbox in your software for "Signature Obtained (Y/N?)". A drop down menu could be added whenever the box is checked "Yes" for your staff to indicate what type of signature they obtained, e.g. patient, type of representative, etc.
8. Consider an edit in your billing software, which will not permit the claim to be billed until you have a valid signature for the patient. Several software products contain a similar edit for the PCS.
9. When submitting claims electronically, you are required to answer either "Y" or "N" to the Signature on File question. However, some of you may output "Patient Unable to Sign" or something similar on your paper claims if you don't get a signature. In the Final Rule, CMS clarified that you can answer "Y" to Signature on File if you meet any of the exceptions to the patient signature requirement. Therefore, you should change the output on your paper claims to "Signature on File" for all claims submitted to Medicare.
10. Educate the facilities you do business with regarding the new signature requirement. They are likely to be more cooperative if they understand why you are now asking for signatures from their ED nurses and/or administrative staff. Explain that they are also permitted to sign on the patient's behalf.
11. See if hospitals, SNFs or other facilities are willing to add your company to their signature form, e.g. "all services rendered by ABC Nursing Home and/or XYZ Ambulance Service".

12. Drop off your lifetime signature form at each of the facilities in your area. Ask that the facility get the patient or their representative to sign the form at the time they are admitted (keep in mind that, at that time, the facility is already asking the patient to sign a number of different forms). Then ask that the facility keep the signature form in their file for the patient. If and when the patient is ever transported by your company, you would then request that the facility provide you with a copy of the signature form.
13. When negotiating contracts with facilities, include language in the contract requiring them to cooperate with you in trying to get signatures from the patient or representative and/or that they will sign on the patient's behalf.
14. If you are a hospital based ambulance provider, you can still use the exception in 42 C.F.R. § 424.36(b)(5) to sign on the patient's behalf. However, you will now need to document "reasonable efforts" to obtain the signature of another authorized person. Therefore, as part of your compliance program, you should develop an internal policy for what steps you will take to meet the "reasonable efforts" requirement, e.g. how you attempt to locate another authorized person and get their signature, how many times you try, how your people should document their attempts, etc.