

## Home Health: New CMS Regulations Take Effect January 1, 2015.

On November 6, 2014 the US Centers for Medicare & Medicaid Services (CMS) announced new regulations for home health agencies that will take effect January 1, 2015.

CMS's Federal Register announcement is available at <http://www.nursinglaw.com/CMS110614.pdf>

The new regulations appear at the end of the eighty-eight page document starting on PDF page 86, Federal Register page 66166.

For payment for home health services under Medicare Part A or Part B, a physician must certify the patient's eligibility for the home health benefit. The patient's medical records must support the physician's certification of eligibility.

If the patient's underlying condition or complication requires a registered nurse to ensure that essential non-skilled care is achieving its purpose, and necessitates a registered nurse be involved in the development, management and evaluation of patient's care plan, the physician will include a brief narrative describing the clinical justification of this need.

If the narrative is part of the certification form, then the narrative must be located immediately prior to the physician's signature. If the narrative is an addendum to the certification form, in addition to the physician's signature on the certification form, the physician must sign immediately following the narrative in the addendum.

A face-to-face encounter must be performed by the certifying physician, a physician who cared for the patient in an acute or post-acute care setting, a nurse practitioner or a physician's assistant. The face-to-face encounter may occur through telehealth through a Medicare telehealth service provider.

Documentation in the medical records from the certifying physician or the acute or post-acute care facility will be used as the basis for certification of home health eligibility. Payment will not be rendered if the documentation is not sufficient to demonstrate that the patient is or was eligible to receive services under the Medicare home health benefit.

FEDERAL REGISTER November 6, 2014  
Pages 66032 - 66118

## On-Call Hospital Staff: Hospital Can Be Liable For Complications Caused By Delay In Arrival.

The lawsuit arose from the care of a four month-old infant who had just undergone surgical repair of a congenital heart defect.

He went into cardiac arrest while in intensive care. That necessitated emergency intervention which required assembly of personnel to operate extracorporeal membrane oxygenation equipment, including a physician and two perfusion techs.

The physician arrived at the bedside within twenty to twenty-five minutes, but then had to wait another twenty-eight minutes for the techs to arrive before going ahead.

The Court of Appeals of Texas accepted a nurse hired by the family's lawyers as an expert on staffing policies, procedures and issues relating to hospital surgical departments.

***The standard of care requires any hospital staff member who is on call, registered nurse, operating room technician or perfusion technician, whatever the individual's job title or clinical capacity, when they are on call for the hospital, to get to the hospital and report for duty within thirty minutes from the time they are called. Delay can compromise patient care.***

COURT OF APPEALS OF TEXAS  
October 29, 2014

According to the family's expert, the legal standard of care imposes a very strict requirement on hospital personnel who are on call absolutely to report for duty within thirty minutes of being called.

Hospitals are under a legal duty to make and enforce policies and procedures so that this will happen as it should.

In this case, according to the Court, it was not speculation for the family's physician experts to state their opinions that increased acidosis in the infant caused by the delay in medical intervention, caused in turn by the techs' lateness in reporting to the hospital after being called in while on call, contributed significantly to the infant's injuries. ***Methodist v. Belden, 2014 WL 5643955 (Tex. App., October 29, 2014).***