

*Administrator*

Washington, DC 20201

AUG 20 2014

The Honorable David P. Roe  
U.S. House of Representatives  
Washington, DC 20515-4202

Dear Representative Roe:

Thank you for your correspondence on behalf of your constituents in Tennessee regarding the Centers for Medicare & Medicaid Services (CMS) Durable Medical Equipment (DME) face-to-face encounter requirements. CMS implemented the statutory requirements set forth in the Affordable Care Act, Section 6407 through the notice and comment rulemaking process. The law requires that a physician document that a physician, nurse practitioner, physician assistant or clinical nurse specialist has had a face-to-face encounter with the patient. The encounter must occur within the 6 months before the order is written for the DME.

Due to continued concerns that some providers and suppliers may need additional time to establish operational protocols necessary to comply with face-to-face encounter requirements mandated by the Affordable Care Act for certain items of DME, CMS instructed the Medicare Administrative Contractors (MACs) to delay actively enforcing and expecting compliance with the DME face-to-face encounter requirements until a date that will be announced in calendar year 2014. This delay is still in effect.

Because other portions of CMS's rule remain in effect, CMS does not feel it is appropriate to modify the enactment date of the regulation. The delay of enforcement only applies to the face-to-face requirements in 42 CFR § 410.38(g)(3) and does not impact provisions related to written orders prior to delivery. CMS expects full compliance with the remaining portions of the regulation. The DME MACs began enforcing the detailed written order requirement as of January 1, 2014.

The CMS has instructed its contractors not to retrospectively audit providers and suppliers for compliance with those requirements. The delay in enforcement on the face-to-face encounter requirements applies to reviews conducted by the DME MACs, Recovery Auditors, the Zone Program Integrity Contractors and Program Safeguard Contractors. However, this delay in enforcement does not apply to reviews completed by the Comprehensive Error Rate Testing Program (CERT). CERT must review claims in accordance with all Medicare policies to produce an unbiased improper payment rate. Once an enforcement date is announced for the delayed requirements, CMS and its contractors will begin enforcement after the announced date. When CMS begins enforcing the face-to-face encounter requirements audits will be conducted prospectively.

The CMS offers a range of educational resources through online manuals and website postings to practitioners who order these items. CMS issued a Medicare Learning Network Matters Article, MM8304- Detailed Written Orders and Face-to-Face Encounter and the DME MACs have provided direct guidance and education to suppliers on the face-to-face encounter. We