

MEMORANDUM

Date: January 28, 2016

Subject: Medicaid Program; Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health (CMS-2348-F)

OVERVIEW

On January 27, 2016 CMS published the final rule to [Medicaid Program; Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health](#). This final rule revises the Medicaid home health service definition to align with the Affordable Care Act and Medicare Access and CHIP Reauthorization Act of 2015 (MACRA). This rule adds the requirements that physicians document the occurrence of face-to-face encounter for home health services, but for certain medical equipment, specified authorized non-physician practitioners (NPP) can also document the occurrence of a face-to-face encounter with the Medicaid eligible beneficiary within reasonable timeframes. This rule also aligns the timeframes for the face-to-face encounter with similar regulatory requirements for Medicare home health services. In addition, this rule amends the definitions of medical supplies, equipment, and appliances. Specifically, this rule may expand coverage of medical supplies, equipment and appliances under the home health benefit. There will be items that had previously only been offered under certain sections of the Social Security Act that will now be covered under the home health benefit. This final rule adopts in large part the provisions proposed in the proposed rule issued on July 12, 2011, but includes conforming changes to the provisions of the proposed rule to reflect the revisions made by MACRA to the underlying Medicare face-to-face encounter requirements.

Based on public comments, CMS recognizes that there may be operational and budgetary implications with this rule and time is needed to implement this provision. To ensure that this rule is implemented appropriately, CMS is delaying compliance with this rule for up to one year if state legislature has met in that year, otherwise 2 years. CMS has also delayed the effective date of this rule to July 1, 2016.

FACE-TO-FACE REQUIREMENT

The final rule requires that for the initial ordering of home health services, the physician must document that a face-to-face encounter that is related to the primary reason the beneficiary requires home health services occurred no more than 90 days before or 30 days after the start of services. The final rule requires that for the initial ordering of certain medical equipment, the physician or authorized NPP must document that a face-to-face encounter that is related to the primary reason the beneficiary requires

medical equipment occurred no more than 6 months prior to the start of services. The face-to-face encounter for home health and medical equipment may be performed by the physician or certain authorized NPPs. In the Act, face-to-face encounters for home health services may be conducted by a nurse practitioner or clinical nurse specialist, who is working in collaboration with the physician in accordance with state law, or a certified nurse-midwife, or a physician's assistant (PA) under the supervision of the physician. A similar definition of NPPs applies for DME under Medicare, with one exception: certified nurse-midwives are not included in the list of NPPs. The final rule maintains the role of the physician in ordering Medicaid home health services and medical equipment. Effective April 16, 2015, for medical equipment, certain authorized NPPs are authorized to document the face-to-face encounter. The final rule maintains the role of the physician in ordering Medicaid home health services and medical equipment.

The ordering physician must document that the face-to-face encounter requirements were met regardless of whether the physician performed the face-to-face encounter himself or herself. It is the physician's responsibility as a provider to ensure that the appropriate medical records are kept. Additionally, the home health agency should maintain a copy of the face-to-face documentation.

CMS finalized that the face-to-face encounter can be performed through the use of telehealth. The timeframes for face-to-face are applicable to encounters performed through telehealth. It is not CMS' intention to allow telephone calls or emails to replace the face-to-face encounter. In other words, telehealth is a service delivery model and does not replace the requirement that a physician or NPP must have a face-to-face encounter with a beneficiary. Rather, the face-to-face encounter can be met through a telehealth delivery model that is recognized by the state as a physician or NPP encounter under its approved state plan.

Any medical supplies, equipment, and appliances provided under the home health benefit must meet the face-to-face requirement. States may decide to apply face-to-face requirements to a broader range of medical supplies, equipment, and appliances than those for which Medicare requires an encounter, but are not required to do so.

Physician residents would be permitted to perform the face-to-face encounter as long as state law in which the resident is practicing recognizes residents as physicians. CMS would defer to states to make this determination. CMS recognizes the potential issues surrounding dually-eligible individuals and the face-to-face requirement. To clarify, if a Medicare enrolled physician has completed the face-to-face requirement for a dually-eligible individual, an additional face-to-face requirement would not be needed by a Medicaid enrolled physician, should the benefit change to Medicaid services, as long as there was no new start of care. However, if a new face-to-face encounter is needed under Medicaid, the physician must be Medicaid-enrolled. This rule does not change any requirements of the laws surrounding the provider enrollment process.

Any physician, including the physician who attended to the beneficiary in the hospital or post-acute setting may serve as the ordering physician for home health services provided that the ordering physician also completes the written plan of care.

CMS clarifies that they are not prescribing the communication between the NPP who performed the face-to-face encounter and the physician, rather the requirement that the clinical findings of the face-to-face encounter are communicated to the ordering physician. This information can be included in clinical and progress notes and discharge summaries.

In the final rule, CMS removed the proposed requirement that the face-to-face documentation be on a separate and distinct area on the written order, an addendum to the order that is easily identifiable and clearly titled, or a separate document easily identifiable and clearly titled in the beneficiary's medical record.

MEDICAL EQUIPMENT and HOME HEALTH SERVICES DEFINITIONS

The rule also codifies current Medicaid policies for coverage of home health services, including clarifying in the definition of medical supplies, equipment, and appliances that items must be suitable for use in any setting in which normal life activities take place, other than a hospital; nursing facility, intermediate care facility for individuals with intellectual disabilities; or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Because DME is not a term used in Medicaid in the same manner as in Medicare, CMS proposed to use the Medicaid term "medical supplies, equipment, and appliances" or the shortened version "medical equipment." Additionally, the rule defines home health supplies, equipment, and appliances, as items that are primarily and customarily used to serve a medical purpose, generally not useful to an individual in the absence of a disability, illness or injury, can withstand repeated use, and can be reusable or removable. This definition aligns better with the Medicare program's definition of durable medical equipment (DME).

COVERAGE OF ITEMS

The rule codifies the policies set forth in September 4, 1998 guidance, about the use of lists or other presumptions in determining coverage of items under the home health benefit for medical equipment, including the following three points:

1. States may have a list of preapproved medical equipment, supplies and appliances for administrative ease, but not as an absolute limit on coverage.
2. States must provide and make available to individuals a reasonable and meaningful procedure for beneficiaries to request medical equipment, supplies or appliances not on the list based on a showing of medical necessity.
3. Individuals must be informed of their right to a fair hearing to appeal an adverse action.



FINAL RULE SUMMARY

Additionally, the rule clarifies CMS' interpretation that the Medicaid statute does not permit absolute exclusions of coverage as medical equipment, supplies, or appliances.