



Home Health Services



*Medicaid Face-to-Face
Requirements for
Home Health Services;
Policy Changes and
Clarifications Related
to Home Health
(2348-F)*

Home Health Rule CMS-2348-F

- NPRM published July 12, 2011
- Final rule published February 2, 2016
- 94 commenters submitted comments

Home Health Final Rule

Enabling Legislation and Regulations

- Section 6407 of the Affordable Care Act added the requirement that physicians document the occurrence of a face-to-face encounter with the Medicaid eligible beneficiary within reasonable timeframes.
- Section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) amended Medicare requirements to allow certain authorized non-physician practitioners (NPP) to document the face-to-face encounter.
- Final rule amended regulatory requirements at 42 CFR 440.70.
- Final rule was published on February 2, 2016 and can be found at <https://federalregister.gov/a/2016-01585>.

Home Health Final Rule: Major Provisions

- Home Health Nursing and Aide Services
 - Face-to-Face Encounter
 - Settings
- Home Health Medical Supplies, Equipment and Appliances
 - Face-to-Face encounter
 - Definitions
 - DeSario decision
 - Settings

Nursing and Aide Services: Face-to-Face Encounter

- Required for initial orders for home health services and for all episodes initiated with the completion of a Start-of-Care OASIS (“Outcome and Assessment Information Set”).
- Must occur 90 days prior to or 30 days after the start of service
- May be performed by a physician, nurse practitioner or clinical nurse specialist working in collaboration with the physician, certified nurse-midwife, or physician assistant under the supervision of the physician.
- Physician must document the occurrence of a face-to-face encounter.

What Changed with Regard to Face-to-Face Encounter: Nursing and Aide Services?

NPRM §440.70(f)(4)(i)(ii)

- Proposed that the ordering physician must:
 - Document the face-to-face encounter as a separate and distinct area on the order itself, as an easily identifiable and clearly titled addendum to the order, or a separate document easily identifiable and clearly titled in the recipient's medical record, to describe how the health status of the recipient at the time of the face-to-face encounter is related to the primary reason the recipient requires home health services.
 - Indicate the practitioner who conducted the encounter, and be clearly titled and dated on the documentation of the face-to-face encounter.

Final Rule §440.70(f)(5)(i)(ii)

- Removes the requirement that the documentation be either 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.
- Clarifies documentation requirements of the physician:
 - Document the face-to-face encounter which is related to the primary reason the patient requires home health services, occurred within the required timeframes.
 - Must indicate the practitioner who conducted the encounter, and the date of the encounter.

Nursing and Aide Services: Settings

- Home health services may not be limited to services furnished in the home.
- Home health services may be provided, as appropriate, in any setting in which normal life activities take place.
- Home health services may not be subject to a requirement that the individual be “homebound.”

Nursing and Aide Services: Settings (Cont.)

Homebound Prohibition

- Homebound requirement is inconsistent with the mandatory nature of the home health benefit and sufficiency and comparability requirements.
- 42 CFR 440.230 provides that mandatory benefits must be sufficient in amount, duration and scope to reasonably achieve their purpose, may not be arbitrarily denied or reduced in scope based on diagnosis, type of illness, or condition.
- 42 CFR 440.240 provides that mandatory benefits must be available in the same amount, duration and scope to any individual within the group of categorically needy individuals and within any group of medically needy individuals.

Nursing and Aide Services: Settings (Cont.)

Skubel and Detsel Decisions

- In Skubel v. Fuoroli, 113 F.3d 330 (2d. Cir. 1997) the court found that the Medicaid statute did not address the site of care for the mandatory home health benefit. The court found that the state could not limit coverage of home health services to those provided at the individual's residence.
- Detsel v. Sullivan, 895 F.2d 58 (2d Cir.1990), involved children suffering from severe medical conditions. Following the Detsel case, CMS, then the Health Care Financing Administration, adopted the court's standard and issued nationwide guidance eliminating the at-home restriction on private duty nursing.

What changed with regard to settings: Nursing and Aide Services

NPRM § 440.70(c)(1)

- Nothing in this section should be read to prohibit a recipient from receiving home health services in any non-institutional setting in which normal life activities take place.

Final Rule § 440.70(c)(1)

- Revised to indicate that a homebound requirement is not permitted.
- Clarified settings in which individuals may receive home health services; 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.

Medical Supplies, Equipment and Appliances: Face-to-Face Encounter

- Must occur no more than 6 months prior to the start of service.
- May be performed by a physician, nurse practitioner or clinical nurse specialist working in collaboration with the physician, or physician assistant under the supervision of the physician.
 - Certified nurse-midwife are not authorized to provide or document the face-to-face encounter for medical supplies, equipment and appliances.
- Physician or above authorized non-physician practitioners must document the occurrence of a face-to-face encounter.

What Changed with Regard to Face-to-Face encounter: Medical Supplies, Equipment and Appliances

NPRM §440.70(f)(1) and (g)(1)

- Proposed that for the initial ordering of medical supplies, equipment and appliances, the physician must document that a face-to-face encounter that is related to the primary reason the beneficiary requires medical supplies, equipment and appliances occurred no more than 90 days prior to or 30 days after the start of services.

Final Rule § 440.70(f)(2) and (g)(1)

- Timeframe for the face-to-face encounter was changed in order to align with Medicare.
- §440.70(f)(2) requires that for the initiation of medical equipment, the face-to-face encounter must be related to the primary reason the beneficiary requires medical equipment and must occur no more than 6 months prior to the start of services.
- §440.70(f)(2) Conforms with Section 504 of the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015 (P.L. 114-10) which modified the Medicare face-to-face encounter requirements for DME, allowing authorized non-physician practitioners to document the face-to-face encounter.

Medical Supplies, Equipment and Appliances: Definition

- Medical supplies, equipment and appliances are a stand-alone component of the home health benefit.
- Medical supplies: Supplies are health care related items that are consumable or disposable, or cannot withstand repeated use by more than one individual, that are required to address an individual medical disability, illness or injury.
- Medical equipment and appliances : Equipment and appliances are items that are primarily and customarily used to serve a medical purpose, generally are not useful to an individual in the absence of a disability, illness or injury, can withstand repeated use, and can be reusable or removable.
- Items that had previously only been offered under sections 1915(c) and 1915(i) that will now be covered under the home health benefit (e.g. grab bars).

What Changed with Regard to the Definition of Medical Supplies, Equipment and Appliances

NPRM § 440.70(b)(3)(i) and (ii)

- We proposed to define medical supplies as “health care related items that are consumable or disposable, or cannot withstand repeated use.
- Proposed to define medical 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 an illness or injury, can withstand repeated use, and can be reusable or removable.”

Final Rule §440.70

- Revised the definition of equipment and appliances to include the term “disability”.
- Clarify that State Medicaid coverage of equipment and appliances is not restricted to the items covered as DME under Medicare.
- Supplies are defined as health care related items that are consumable or disposable, or cannot withstand repeated use by more than one individual, that are required to address an individual medical disability, illness or injury.
- Equipment and Appliances are defined as items that are primarily and customarily used to serve a medical purpose, generally are not useful to an individual in the absence of a disability, illness or injury, can withstand repeated use, and can be reusable or removable.

Medical Supplies, Equipment and Appliances: DeSario Decision

- Final rule codifies CMS policies reflected in a September 4, 1998 letter to State Medicaid Directors, responding in part to a Second Circuit decision in DeSario v. Thomas, 139 F. 3d 80 (1998), about the use of lists or other presumptions in determining coverage of items under the home health benefit for medical supplies, equipment and appliances.

Medical Supplies, Equipment and Appliances: DeSario Decision (Cont.)

- States may have a list of preapproved medical equipment, supplies, and appliances for administrative ease but not as an absolute limit on coverage.
- States must provide and make available to individuals a reasonable and meaningful procedure for individuals to request items not on the list.
- Individuals must be informed of their right to a fair hearing.

What Changed with Regard to the DeSario decision and Medical Supplies, Equipment and Appliances

NPRM

- Did not propose any language to reflect DeSario policy but invited comment on the issue.

Final Rule §440.70(b)(3)(v)

- Incorporates into regulation the basic points set forth in 1998 guidance relating to the DeSario decision:
 - States can have a list of preapproved medical equipment supplies and appliances for administrative ease but states are prohibited from having absolute exclusions of coverage on medical equipment, supplies, or appliances.
 - States must have processes and criteria for requesting medical equipment that is made available to individuals to request items not on the State's list. The procedure must use reasonable and specific criteria to assess items for coverage.
 - When denying a request, a state must inform the beneficiary of the right to a fair hearing.

Medical Supplies, Equipment and Appliances: Settings

- Final rule clarifies that the term “suitable for use in the home” is not a limitation on the location in which items are used, but rather refers to items that are necessary for everyday activities and not specialized for an institutional setting.
- States may not deny requests for the items based on the grounds that they are for use outside of the home.
- States may continue to establish medical necessity criteria to determine the authorization of the items.

What Changed with Regard to Settings and Medical Supplies, Equipment and Appliances

- This provision was finalized without revisions.
- §440.70(b)(3): Medical supplies, equipment, and appliances suitable for use in any setting in which normal life activities take place, as defined at §440.70(c)(1).

Home Health Final Rule: Effective Date and Implementation

- This rule goes into effect on July 1, 2016.
- States have up to one year if legislature has met in that year, otherwise two years to come into compliance.
- States will be expected to be in compliance by July 1, 2017 or July 1, 2018 based on legislative timeframes as described above.

Questions?

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