

**Center for Medicaid, CHIP and Survey & Certification**

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***CMCS Informational Bulletin***

**DATE:** September 8, 2010

**FROM:** Cindy Mann, Director  
Center for Medicaid, CHIP and Survey & Certification (CMCS)

**SUBJECT: Opportunity to Comment on Proposed Rule to Implement Section 6407 of the Affordable Care Act: Home Health**

I am writing to remind you that on Friday, July 23, 2010, the Centers for Medicare & Medicaid Services published in the Federal Register the Proposed Rule to incorporate new legislative requirements in the Affordable Care Act which mandate that, prior to certifying a patient's eligibility for the Medicare home health benefit, the physician must document that the physician or a non-physician practitioner has had a face-to-face encounter with the patient. Section 6407 is largely a Medicare provision but it applies to Medicaid in the same manner and to the same extent in the case of physicians authorizing home health services.

Section 6407 (as amended by Section 10605) of the Affordable Care Act requires that physicians document the existence of a face-to-face encounter (including through the use of telehealth) with the Medicaid eligible individual prior to ordering the provision of home health services. This face-to-face encounter may be conducted by the physician, by a nurse practitioner or clinical nurse specialist working in collaboration with the physician in accordance with State law, by a certified nurse-midwife as authorized by State law, or by a physician assistant under the supervision of the physician. In addition, the Affordable Care Act requires that the physician document the existence of a face-to-face encounter (including through the use of telehealth) with the Medicaid eligible individual prior to ordering medical supplies, equipment or appliances. This face-to-face encounter may also be conducted by any of the individuals referenced above, with the exception of certified nurse-midwives. The proposed rule establishes timeframes for these encounters and documentation requirements associated with the provision.

The Medicare program included this Proposed Rule in the Home Health Prospective Payment System Rate Update for Calendar Year 2011. The proposed effective date for implementing the face-to-face encounters as they relate to home health is January 1, 2011. The Medicaid program is currently promulgating a Notice of Proposed Rulemaking (NPRM) to implement this Affordable Care Act provision in 42 CFR 440.70. While a Medicaid-specific NPRM will be published at a later date, we wanted to make States aware of the opportunity to comment on the Medicare proposed rule as these comments will inform the promulgation of final rules in both the Medicare and Medicaid programs.

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Comments on the Medicare proposed rule are due no later than **5 p.m. on September 14, 2010.**

The regulation is available for viewing at:

<http://edocket.access.gpo.gov/2010/pdf/2010-17753.pdf>

Thank you for your continued commitment to these critical health coverage programs. Questions regarding this rule can be directed to Linda Peltz, Director, Division of Coverage and Integration, Disabled and Elderly Health Programs Group, at 410-786-3399, or via email at [linda.peltz@cms.hhs.gov](mailto:linda.peltz@cms.hhs.gov).