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## **Medicaid Program; Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health (CMS-2348-F) Final Rule Fact Sheet**

### **Overview**

Today the Centers for Medicare & Medicaid Services (CMS) issued a final rule that implements section 6407 of Affordable Care Act and section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) to strengthen the provision and integrity of home health services. This rule will promote program integrity and provide clear guidance on the parameters of the home health benefit in Medicaid which will enable beneficiaries to receive high quality care in the community, rather than rely on care in more expensive institutional settings. Additionally, this rule aligns with Medicare to the greatest extent possible which will help to streamline beneficiaries' access to needed items and maximize consistency in service delivery, as well as reduce administrative burden on the provider community.

This regulation requires physicians to document face-to-face encounters with the Medicaid beneficiary for the authorization of home health services within certain timeframes. In addition, for medical supplies, equipment, and appliances, physicians or certain authorized non-physician practitioners (NPPs) must document the occurrence of a face-to-face encounter with the Medicaid eligible beneficiary within reasonable timeframes. This process can include the use of telehealth. In addition, this final rule clarifies that Medicaid home health services are not limited to home settings, and makes additional changes to the requirements for coverage of medical supplies, equipment, and appliances under the home health benefit.

### **Documentation of Face-to-Face Encounters within Certain Timeframes**

The final rule aligns with Medicare timeframes for the face-to-face encounter for home health services and medical supplies, equipment, and appliances. Specifically, the final rule requires that for the initial ordering of home health services (nursing services and home health aide 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. For the initial ordering of medical supplies, equipment, or appliances, the physician or authorized NPP must document that the face-to-face encounter occurred no more than six months prior to the start of services. The face-to-face encounter for home health and medical supplies, equipment, and appliances may be performed by the physician or certain authorized NPPs. The final rule maintains the role of the physician in ordering Medicaid home health services and medical supplies, equipment, and appliances.

### **Changes to Requirements for Coverage of Medical Supplies, Equipment and Appliances**

An important component of the Medicaid home health benefit is coverage of medical supplies, equipment, and appliances. The previous regulation did not specifically denote medical

supplies, equipment, and appliances under the home health benefit, except to indicate that the items should be suitable for use in the home.

This final rule provides a definition of medical supplies, equipment, and appliances. Based on this new definition, this rule will expand coverage of medical supplies, equipment, and appliances under the home health benefit; certain items that had previously only been offered under sections 1915(c) and 1915(i) waivers will now meet the definition of medical supplies, equipment, and appliances and thus be covered under the state plan home health benefit. This rule also clarifies that medical supplies, equipment, and appliances may not be restricted to the home setting.

### **Other Policy Clarifications**

In a State Medicaid Directors Letter dated September 4, 1998, CMS (then HCFA) provided guidance, responding in part to a Second Circuit decision in DeSario v. Thomas, 139 F. 3d 80 (1998), on the use of lists in determining coverage of medical supplies, equipment, and appliances under the home health benefit. The guidance directed that states may have a list of preapproved medical supplies, equipment, and appliances for administrative ease, but not as an absolute limit on coverage. Further, it directed that states must provide and make available to beneficiaries a reasonable and meaningful procedure to request medical supplies, equipment, or appliances not on the list based on a showing of medical necessity, and further, that individuals must be informed of their right to a fair hearing to appeal an adverse action. This rule codifies the 1998 guidance.

This rule also incorporates the principles of the Skubel v. Fuoroli, 113 F.3d 330 (2d. Cir. 1997), Detsel v. Sullivan, 895 F.2d 58 (2d Cir.1990), and Olmstead v. L.C., 527 U.S. 581 (1999) decisions by clarifying longstanding policy that states may not require an individual to be “homebound” in order to receive home health services. In addition, this rule clarifies that home health services cannot otherwise be restricted to services furnished in the home itself.