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## CMS Proposes Medicaid Face-to-Face Requirements for Home Health and Medical Supplies and Equipment

By: [Carel T. Hedlund](#)

Home health agencies, still struggling to meet the Medicare face-to-face requirements that went into effect last spring, will also have to deal with similar requirements for their Medicaid patients. CMS issued a [proposed rule \[PDF\]](#) on July 12, 2011 that would provide that, in order for a physician to order home health services or medical supplies, equipment or appliances (called for convenience "medical equipment"), the physician or a permitted non-physician practitioner (NPP) must have a face-to-face encounter with the patient. The proposed rule also clarifies where and to whom Medicaid home health services can be provided and elaborates on the definition of medical equipment. The comment period ends on *September 12, 2011*.

### Medicaid Face-to-Face Requirements

In accordance with the provisions of the Affordable Care Act, CMS proposes, generally, to adopt the same face-to-face requirements for Medicaid home health and medical equipment as it has for Medicare home health and durable medical equipment (DME). See "[Therapy Changes, Face-to-Face Encounter Provisions and Enrollment Changes are Highlights of CY 2011 Home Health PPS Final Rule.](#)" The following are some of the highlights of the proposed rule:

- For home health, the encounter must be performed within 90 days prior to the start of care or within 30 days following the start of care. For medical equipment, the encounter must be within 90 days prior or 30 days following the order for the equipment.

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- For Medicaid individuals admitted to home health following discharge from a hospital or a post-acute setting (e.g. a SNF), the attending physician in the hospital or post-acute setting may perform the encounter and communicate the results to the ordering physician.
- The proposal would give States the authority, if they wish, to implement a minimum list of required information to adequately document the encounter.
- The encounter may be performed through telehealth, and CMS is soliciting comments on approaches to align Medicare and Medicaid telehealth policies.
- The face-to-face encounter for medical equipment would be limited to those items of DME that require a face-to-face encounter under Medicare.
- For medical equipment, nurse-midwives cannot perform the face-to-face encounter. For home health services, the same categories of NPPs can perform the encounter for both Medicare and Medicaid.

CMS also proposes to include regulatory provisions that home health services may not be subject to a requirement that the individual be "homebound," and that home health services cannot be restricted to services furnished in the home. These revisions would codify existing policy aimed at helping States comply with the Americans with Disabilities Act.

### **Medical Equipment Definitions and Policy**

CMS proposes to define what constitutes medical equipment as "medical supplies, equipment, and appliances suitable for use in any non-institutional setting in which normal life activities take place." The purpose of this clarification is to make it clear that these items cannot be restricted to those used in the home. It further proposes to align the definitions of "medical supplies" and "medical equipment and appliances" with the Medicare definitions of these terms.

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CMS is also specifically seeking comment on two related issues:

- Whether it should include language in the regulations permitting a State to use lists or other presumptions in determining coverage of items under the home health benefit for medical equipment, and a process to permit individuals to have an opportunity to rebut the list or presumption.
- Whether CMS should incorporate changes to the scope of providers that may order medical equipment in the Medicaid program.

#### **Ober|Kaler's Comments**

It's helpful that, by and large, the proposed requirements for face-to-face encounters for Medicaid patients will be the same as the Medicare requirements. But home health agencies still face enormous problems getting physicians to complete the documentation of the encounters. Some States (e.g. Ohio) have already instituted these requirements. Once these regulations are finalized, other States will soon follow suit, as no payment will be allowed for services not meeting these requirements.