

In response to the commenters who requested that HHA medical directors act as the certifying physician in the face-to-face encounter or that the HHAs hire physicians to perform the face-to-face encounter, we remind the commenters of longstanding regulatory prohibitions in § 424.22 which impose financial restrictions on the relationship between the HHA and the certifying physician. We continue to believe that these financial restrictions strengthen the integrity of the benefit.

Comment: Several commenters stated concern regarding the proposed restriction that NPPs who are employed by the HHA cannot perform the face-to-face encounter. Commenters state that the proposed regulation imposes stricter financial criteria on the relationship between the HHA and NPPs who are performing the face-to-face encounter than has previously been applied to physicians who certify HH eligibility. Commenters stated that by having the same financial relationship criteria for certifying physicians and NPPs performing a face-to-face encounter, CMS will minimize conflict of interest while maximizing the number of medical personnel who are qualified to perform the face-to-face encounter. Other commenters believe that HHA NPPs should be allowed to perform the face-to-face encounter, noting that the increase in integrated health systems and associated efficiencies in providing care would justify allowing the practitioner to be an employee of the HHA. Several commenters also requested that NPPs be allowed to certify HH eligibility.

Response: We believe that given the HH program integrity concerns in certain pockets of the country surrounding the certification of HH

eligibility, it is imperative that NPPs be subject to the same financial limitations with the HHA as currently apply to the certifying physician. We agree with the commenters that the NPPs should not be subject to harsher financial limitations with the HHA than the certifying physician and we have revised the proposed § 424.22 accordingly. In response to the commenter who requested that NPPs be allowed to certify HH eligibility, we remind the commenter that sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act prohibit this.

FINAL RULE

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§ 424.22 Requirements for home health services.

(a) * * *

(1) * * *

(v) The physician responsible for performing the initial certification must document that the face-to-face patient encounter, which is related to the primary reason the patient requires home health services, has occurred no more than 90 days prior to the home health start of care date or within 30 days of the start of the home health care by including the date of the encounter, and including an explanation of why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) respectively. Under sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act, the face-to-face encounter must be performed by the certifying physician himself or herself or by a nurse practitioner, a clinical nurse specialist (as those terms are defined in section 1861(aa)(5) of the Act) who is working in collaboration with the physician in accordance with State law, a certified nurse midwife (as defined in section 1861(gg) of the Act) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5) of the Act) under the supervision of the physician. The documentation of the face-to-face patient encounter must be a separate and distinct section of, or an addendum to, the certification, and must be clearly titled, dated and signed by the certifying physician.

(A) The nonphysician practitioner performing the face-to-face encounter

must document the clinical findings of that face-to-face patient encounter and communicate those findings to the certifying physician.

(B) If a face-to-face patient encounter occurred within 90 days of the start of care but is not related to the primary reason the patient requires home health services, or the patient has not seen the certifying physician or allowed nonphysician practitioner within the 90 days prior to the start of the home health episode, the certifying physician or nonphysician practitioner must have a face to face encounter with the patient within 30 days of the start of the home health care.

(C) The face-to-face patient encounter may occur through telehealth, in compliance with Section 1834(m) of the Act and subject to the list of payable Medicare telehealth services established by the applicable physician fee schedule regulation.

(D) The physician responsible for certifying the patient for home care must document the face-to-face encounter on the certification itself, or as an addendum to the certification (as described in paragraph (a)(1)(v) of this section), that the condition for which the patient was being treated in the face-to-face patient encounter is related to the primary reason the patient requires home health services, and why the clinical findings of such encounter support that the patient is homebound and in need of either intermittent skilled nursing services or therapy services as defined in § 409.42(a) and (c) respectively. The documentation must be clearly titled, dated and signed by the certifying physician.

(2) *Timing and signature.* The certification of need for home health services must be obtained at the time

the plan of care is established or as soon thereafter as possible and must be signed and dated by the physician who establishes the plan.

(b) * * *

(1) *Timing and signature of recertification.* Recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed and dated by the physician who reviews the plan of care. The recertification is required at least every 60 days when there is a—

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(d) *Limitation of the performance of physician certification and plan of care functions.* The need for home health services to be provided by an HHA may not be certified or recertified, and a plan of care may not be established and reviewed, by any physician who has a financial relationship as defined in § 411.354 of this chapter, with that HHA, unless the physician's relationship meets one of the exceptions in section 1877 of the Act, which sets forth general exceptions to the referral prohibition related to both ownership/investment and compensation; exceptions to the referral prohibition related to ownership or investment interests; and exceptions to the referral prohibition related to compensation arrangements.

(1) If a physician has a financial relationship as defined in § 411.354 of this chapter, with an HHA, the physician may not certify or recertify need for home health services provided by that HHA, establish or review a plan of treatment for such services, or conduct the face-to-face encounter required under sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act unless the financial relationship meets one of the exceptions set forth in § 411.355

through § 411.357 of this chapter.

(2) A Nonphysician practitioner may not perform the face-to-face encounter required under sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act if such encounter would be prohibited under paragraph (d)(i) if the nonphysician practitioner were a physician.