

The Centers for Medicare & Medicaid Services (CMS) has provided the following response to an outstanding question submitted by the National Association for Home Care & Hospice (NAHC).

Question

There is confusion based on the regulations below. Section 424.22(a)(v) (A)(2) states that a NP, PA, or a CNS may conduct the F2F encounter when collaborating with certifying physician whether in a facility or in the community. However, 424.22(a)(v) (C) (1) and (2) seem to limit who may conduct the F2F encounter when an NP, PA, or CNS is certifying beneficiaries admitted to home health from the community. Section (C) reads as though the NP, PA, or CNS may only conduct the F2F encounter if they are the certifying practitioner. These sections are conflicting and seem to prohibit NPPs who are not certifying but are working in collaboration with a certifying physician to conduct the F2F encounter for beneficiaries admitted to home health from the community.

- 424.22(a)(v)(A) and (C)

(A) The face-to-face encounter must be performed by one of the following:

(1) The certifying physician (as defined at §484.2 of this chapter) or a physician, with privileges, who cared for the patient in an acute or post-acute care facility from which the patient was directly admitted to home health.

(2) The certifying nurse practitioner (as defined at §484.2 of this chapter), certifying clinical nurse specialist (as defined at §484.2 of this chapter), or a nurse practitioner or a clinical nurse specialist who is working in accordance with State law and in collaboration with a physician or in collaboration with an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(3) A certified nurse midwife (as defined in section 1861(gg) of the Act) as authorized by State law, under the supervision of a physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(4) A certifying physician assistant (as defined at §484.2 of this chapter) or a physician assistant under the supervision of a physician or under the supervision of an acute or post-acute care physician with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health.

(B) 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.

(C) The face-to-face patient encounter must be performed by the certifying physician or allowed practitioner unless the encounter is performed by:

(1) A certified nurse midwife as described in paragraph (a)(1)(v)(A)(4) of this section.

(2) A physician, physician assistant, nurse practitioner, or clinical nurse specialist with privileges who cared for the patient in the acute or post-acute facility from which the patient was directly admitted to home health and who is different from the certifying practitioner.

CMS Response: The statute states only that the certifying physician must document that the physician or NPP has had a face-to-face encounter prior to certification. It does not prevent a community-based physician from conducting the F2F, when he/she is not the certifying physician. Therefore, this would not limit the F2F (conducted by a community physician or allowed NPP) to only the certifying physician or allowed practitioner. We will consider proposing conforming regulation text changes in future rulemaking to make this clear.

In their response, CMS is referring to the statutory language from the CARES Act. A provision in the CARES Act replaced a section in the Social Security Act at 1814(a)(2)(C), which eliminated the requirement that the certifying physician himself or herself, or an NPP collaborating with the certifying physician, had a face to face encounter with the beneficiary. The revised statutory language permits a certifying practitioner to document that any allowed practitioner has conducted the F2F encounter regardless of whether they are the certifying practitioner or collaborating with certifying practitioner.

1814(a)(2)(C)

“and, in the case of a certification made by a physician after January 1, 2010, prior to making such certification the physician must document that prior to making such certification the physician must document that the physician himself or herself , or a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1861(aa)(5)) who is working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1861(gg)) as authorized by State law, or a physician assistant (as defined in section 1861(aa)(5)) under the supervision of the physician, has had a face-to-face encounter (including through use of telehealth, subject to the requirements in section 1834(m), and other than with respect to encounters that are incident to services involved) with the individual within a reasonable timeframe as determined by the Secretary; “

CARES Act language

by striking “, and, in the case of a certification made by a physician” and all that follows through “face-to-face encounter” and inserting “, and, in the case of a certification made by a physician after January 1, 2010, or by a nurse practitioner, clinical nurse specialist,

or physician assistant (as the case may be) after a date specified by the Secretary (but in no case later than the date that is 6 months after the date of the enactment of the (CARES Act), prior to making such certification a physician, nurse practitioner, clinical nurse specialist, or physician assistant must document that a physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife (as defined in section 1861(gg)) as authorized by State law, or physician assistant has had a face-to-face encounter”

Although CMS recognizes the change in the statute for the home health F2F encounter, It is unclear whether the MACs have received any instructions regarding CMS’ position