



September 12, 2011

Donald M. Berwick, M.D.
Administrator
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-2348-P
P.O. Box 8016
Baltimore, MD 21244-8016

**RE: Medicaid Program; Face-to-Face Requirements for Home Health Services;
Policy Changes and Clarifications Related to Home Health; CMS-2348-P**

Dear Dr. Berwick:

AARP is pleased to provide the following comments on the above proposed rule, which was published in the *Federal Register* on July 12, 2011. The proposed changes would impact Medicaid recipients who are or may be eligible for Medicaid home health services, which help individuals live in their homes and communities. We especially want to commend the Centers for Medicare & Medicaid Services (CMS) for proposing to clarify that Medicaid home health services may not be subject to a requirement that the individual be "homebound."

Application of Home Health Face-to-Face Requirements to Medicaid

CMS proposes to implement the face-to-face encounter requirements in Section 6407 of the Affordable Care Act for Medicaid home health and medical equipment. The law does note that these requirements in Medicaid "shall apply...in the same manner and to the same extent as such requirements apply..." in Medicare. However, CMS also has discretion within the scope of the law in how these requirements are implemented.

CMS has now had several months experience in implementing these requirements in Medicare. AARP urges CMS to use insights and information gleaned from this experience to improve, as needed, ongoing implementation of these requirements in both Medicare and Medicaid. We want to ensure that the face-to-face visit requirements do not impede access to necessary home health care in either Medicare or Medicaid. We also note that some individuals are dually eligible for both Medicare and Medicaid, and may face greater challenges accessing and coordinating necessary care and services. CMS has been monitoring the impact of implementation of these requirements in Medicare, and we also strongly urge CMS and state Medicaid programs

to monitor and help protect access to necessary home health services in Medicaid, including for dually-eligible individuals. Lack of access to or delays in accessing home health care could mean that individuals receive more costly institutional care and that their ability to live in their home and community is compromised. CMS should consider individuals' access to providers in implementing this regulation and carefully consider stakeholder input on this point.

As CMS notes, the law requires that a physician, nurse practitioner, clinical nurse specialist, certified nurse-midwife, or physician assistant have a face-to-face encounter with the individual before a physician certifies the individual's need for home health and that the face-to-face encounter occurred. This means an extra step for an individual who sees a non-physician provider, a potential delay in the ability to access home health care, and potential increased costs for the individual. While a legislative change would be necessary to achieve this, we believe that such non-physician providers should also be able to order (certify) home health services.

Clarification Regarding "Homebound" and Medicaid Home Health

AARP strongly supports CMS' proposed clarification that Medicaid home health services may not be subject to a requirement that the individual be "homebound". The "homebound" requirement is a Medicare, not a Medicaid, requirement. The regulatory clarification that Medicaid home health services may not be subject to a requirement that the individual be homebound is an important step to help ensure implementation of the Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). However, we note that while the preamble contains this important "homebound" clarification, the actual text of the proposed rule does not contain this clarification. AARP strongly urges CMS to include in the actual text of the final regulation a provision clarifying that home health services may not be subject to a requirement that the individual be "homebound". CMS should leave no ambiguity in this important clarification.

CMS has also noted in past correspondence that "...the state may not require that an individual require the services of a skilled nurse or therapist in order to receive either the services of a Home health aide, or medical equipment and supplies under home health. This requirement is not specified in Medicaid law or regulations." CMS may also wish to provide this clarification in the final regulations.

Medical Supplies, Equipment and Appliances Clarification

Among the clarifications CMS proposes is one to clarify Medicaid home health benefit medical supplies, equipment and appliances regulatory language "to make clear that it is not a limitation on the location in which items are used, but rather refers to items that are necessary for everyday activities and not specialized for an institutional setting." Current language says that medical supplies, equipment and appliances in the Medicaid home health benefit should be "suitable for use in the home". CMS is proposing that these items must be "suitable for use in any non-institutional setting in which normal life

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activities take place". This acknowledges that individuals engage in daily activities in which they may need such equipment not only in their homes, but also as they go about their daily activities in the community. AARP supports this important change and clarification.

Thank you again for the opportunity to comment on this important proposed rule and vital issues about access to necessary home health services. If you have questions, please feel free to contact me or Rhonda Richards in our Government Affairs Department at (202) 434-3770.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel & Legislative Policy Director
Government Affairs