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Non-Physician Practitioner (NPP) Questions and Answers

Key Words

SE0418, Non-Physician, Practitioner, Survey, Certification, SNF, Nursing

Provider Types Affected

Non-Physician Practitioners (NPPs), physicians, suppliers, and providers

Key Points

- The Balanced Budget Act of 1997 modified the way the Medicare program pays NPP services by removing restrictions on settings.
- Effective January 1998, payment is allowed for NPP services in all geographic areas and health settings permitted under the state licensing laws.
- On November 13, 2003, the Centers for Medicare & Medicaid Services (CMS) issued the Survey & Certification letter (S&C-04-08), which addresses the differences in requirements for the delegation of physician tasks in Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs) from a survey and certification perspective.
- Reimbursement requirements for NPPs may differ from the survey and certification requirements.

Questions and Answers

Following are questions that have been asked by NPPs and the answers that have been provided by CMS.

Q1. Why do new regulations from CMS governing physician delegation of services differ between Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs)?

A1. The requirements addressing physician delegation of services are not new. The distinction made between the delegation of physician visits and tasks between SNFs and NFs is mandated by Congress in the law.

The original authority for 42 Code of Federal Regulations (CFR) § 483.40 was the sentence in Section 1819(b)(6)(A) of the Social Security Act requiring that every SNF resident's medical care be under the supervision of a physician (the same sentence appeared in Section 1919(b)(6)(A) of the Social Security Act

for NFs). The requirements contained in 42 CFR, § 483.40, include a prescribed visit schedule and the requirement for the physician to perform the initial visit personally.

Section 483.40 of the CFR originally applied these same standards uniformly in both SNFs and NFs. However, in Section 4801(d) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Congress subsequently amended the Medicaid provisions of the law (Section 1919(b)(6)(A) of the Social Security Act) to allow, at the option of the state, all physician tasks (including the initial visit) to be delegated to physician extenders who are not employed by the facility but who are working in collaboration with the physician. In response, CMS amended the regulations to reflect this broader authority for delegating physician tasks in NFs (see § 483.40(f)). Since Congress declined to make a similar change in the statutory requirements for SNFs at Section 1819(b)(6)(A) of the Social Security Act, the corresponding SNF requirements in § 483.40(c) and (e) remain unchanged.

Q2. When may non-physician practitioners (NPPs) begin to bill for medically necessary visits that occur prior to the initial comprehensive visit in a SNF and in a NF?

A2. CMS defined “initial comprehensive visit” in the November 13, 2003, S&C-04-08 and stated that NPPs may perform any medically necessary visits even if they occur prior to the initial comprehensive visits in both SNFs and NFs. Medically necessary visits that NPPs perform on or after November 13, 2003, may be billed to the carrier when collaboration and billing requirements are met in the SNF and NF setting. The Survey & Certification letter S&C-04-08, may be found at <http://www.cms.hhs.gov/medicaid/survey-cert/letters.asp> on the CMS web site.

Q3. If state regulations require a physician's co-signature for orders and/or notes written by an NPP, may the physician bill for this action?

A3. No. CMS only pays for medically necessary face-to-face visits by the physician or NPP with the resident. Since the NPP is performing the medically necessary visit, the NPP would bill for the visit.

Q4. If state regulations require more frequent visits than those that are federally mandated, are NPPs able to bill for those visits?

A4. CMS only reimburses physicians and NPPs for medically necessary visits and federally prescribed visits. Visits required to fulfill or meet state requirements are considered administrative requirements and are not medically necessary for the resident. Medicare pays for services that are reasonable and medically necessary for the treatment of illness or injury only, as stated in the Social Security Act, Section 1862(a)(1)(A).

Q5. May NPPs who are employed by the facility bill for medically necessary visits?

A5. Payment may be made for the services of Nurse Practitioners (NPs) and Clinical Nurse Specialists (CNSs) who are employed by a SNF or NF when their services are rendered to facility residents. If NPs and CNSs employed by a facility opt to reassign payment for their professional services to the facility, the facility can bill the appropriate Medicare Part B carrier under the NPs' or CNSs' Unique Physician Identification Numbers (UPINs) for their professional services. Otherwise, the NPs or CNSs who are employed by a SNF or NF bill the carrier directly for their services to facility residents.

On the other hand, Physician Assistants (PAs) who are employed by a SNF or NF cannot reassign payment for their professional services to the facility because Medicare law requires the employer of a PA to bill for the PA's services. Hence, the facility must always bill the Part B carrier under the PA's UPIN for the PA's professional services to facility residents.

Q6. May NPPs employed by the NF perform the initial comprehensive visit, sign initial orders, or perform other federally required visits in NFs?

A6. No. The statute specifies that the NPPs are prohibited from providing these services when **employed** by the facility. The Social Security Act states at Section 1919(b)(6)(A) that the health care of every resident must be provided under the supervision of a physician or under the supervision of an NPP **not** employed by the facility who is working in collaboration with a physician.

Q7. May NPPs perform the initial comprehensive visit in SNFs?

A7. No. The Social Security Act states at Section 1819(b)(6)(A) “that the medical care of every resident must be provided under the supervision of a physician.” Congress did not extend this benefit to NPPs in an SNF as was done under 1919(b)(6)(A).

Q8. When may NPPs sign the initial orders for a SNF resident?

A8. NPPs may not sign initial orders for an SNF resident. However, they may write initial orders for a resident (only) when they review those orders with the attending physician in person or via telephone conversation and have the orders signed by the physician.

Q9. Must a physician verify and sign orders written by an NPP who is employed by the NF?

A9. Yes. The regulation at 42 CFR, § 483.40(b)(3) states, the physician must “Sign and date all orders with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved facility policy after an assessment for contraindications.” In accordance with 42 CFR, Section 483.40(f), required physician tasks, such as verifying and signing orders in an NF, can be delegated under certain circumstances to a physician assistant, nurse practitioner, or clinical nurse specialist who is **not** an employee of the facility but who is working in collaboration with a physician. Therefore, in order to comply with survey and certification requirements, the physician must sign all orders written by an NPP who **is** employed by the NF.

Q10. Why must a physician verify and sign orders written by an NPP in the SNF?

A10. In SNFs, depending on state law and the facility’s policy, physicians do NOT have to verify and sign orders written by an NPP after the initial comprehensive visit. Nonetheless, the ultimate responsibility for delegated tasks remains with the physician, as indicated in § 483.40(e)(1)(iii). For a NF, depending upon state law, NPPs not employed by the facility, but who are working in collaboration with a physician, are not required to have their orders (initial or ongoing) cosigned by a physician.

Q11. Referring to S&C –04-08 issued on November 13, 2003, the chart under the “Other Medically Necessary Visits and Orders” column, it specifies the ability of the NPP to perform AND sign but in the column for “Other Required Visits” it does not address signing. Does CMS require a physician’s signature in such cases?

A11. ‘Other Required Visits’ refers to the federally required visits. During these required visits, it is not always necessary to write orders. However, during a “Medically Necessary Visit,” which is when the resident’s condition may have changed, thus, warranting a visit outside the federally required schedule, the resident is exhibiting signs and/or symptoms that require medical attention. In these cases, CMS believes orders will often be required and, thus, expect orders to address the resident’s change in condition. Therefore, an NPP may sign the medically required orders. The survey and certification requirement that the physician must sign and date all orders remains in effect. (See Q&As 9 & 10.)

Q12. Why can't a PA, regardless of employment, sign certifications/re-certifications for SNF residents?

A12. Congress amended Section 1814(a)(2) of the Social Security Act in 1989. The Social Security Act **specifies** that NPs and CNSs who are not employed by the facility may certify (and recertify) that the services the beneficiary requires may only be performed in the SNF. They did not extend this benefit to PAs. Therefore, by statute, PAs may not sign SNF certifications/re-certifications.

Q13. If a physician extender is not employed by the NF but is employed by an organization related to the NF, may he/she still provide services in the nursing home?

A13. The requirement in 42 CFR, § 483.40(f), is specific in that the physician tasks may be performed by a NP, PA, or CNS "who is not an employee of the facility." In this case, the NPP is not an employee of the NF and, thus, can perform physician tasks as long as they work in collaboration with the physician.

Q14. If an NP or CNS is not employed by the SNF, but is employed by an organization related to the SNF, may he/she sign the certification and re-certifications?

A14. The requirement in 42 CFR § 424.20(e) is specific in that an NP or CNS "neither of whom has a direct or indirect employment relationship with the facility" may sign the certifications and re-certifications. Under 42 CFR 424.20(e)(2)(ii), when an NP or CNS has a direct employment relationship (as defined under common law) with an entity other than the SNF itself, he or she is also considered to have an indirect employment relationship with the SNF in any instance where the employing entity has an agreement with the SNF for the provision of general nursing services. For further explanation of this provision, providers should refer to the FY 2006 SNF prospective payment system final rule, 70 FR 45035 - 36, August 4, 2005. (Social Security Act Section 1814(a)(2))

Q15. If physician delegation responsibilities are based on payment source, what are the physician delegation responsibilities for private pay resident, Veteran Administration contracts or managed care?

A15. If the resident's stay is being paid for by a source other than Medicare or Medicaid AND the resident is residing in a Medicare/Medicaid dually-certified facility, follow the most stringent requirement. If the resident is residing in a Medicare only or a Medicaid only certified facility, then providers should follow the requirements for that specific certified facility.

Q16. Are NPPs allowed to certify/recertify therapy plans of care under Medicare Part B?

A16. 42 CFR § 424.24(c)(3) states that if a physician or NPP establishes the plan of care, he/she must also certify the plan of care. If the plan of care is established by a physical or occupational therapist or speech language pathologist, a physician or NPP who has knowledge of the case must sign the plan of care. (This Q&A was **not** addressed in the November 13, 2003, Survey & Certification letter, S&C-04-08.)

Important Links

The related MLN Matters article can be found at

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0418.pdf> on the CMS web site.