

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-05-06

DATE: November 12, 2004

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Application of the Home Health Agency (HHA) Conditions of Participation (CoPs) to Patients Receiving Chore Services Exclusively

Letter Summary

- This memorandum provides guidance to surveyors on the application of the Medicare CoPs to those patients receiving only chore (or certain other non-medical) services from the HHA.
- An HHA is not required to conduct a comprehensive assessment on individuals where HHA services are entirely limited to housekeeping, chore, or certain other non-medical services.
- As soon as the HHA provides any Medicare service to these individuals, or any standard service permitted by Federal law under the Medicaid State Plan, we will consider the individuals to be receiving medical care and the CoPs will apply.

Background

The statutory requirements under section 1891(b) of the Social Security Act (the Act) make the Secretary responsible for ensuring that Medicare's requirements, and the enforcement of those requirements, "are adequate to protect the health and safety of individuals under the care of a home health agency..." CMS interprets the word "individuals" to mean that the Medicare CoPs apply to all patients served by the HHA, regardless of payor source, unless the CoP is specifically limited to Medicare beneficiaries. Regulations at 42 CFR 484.55 further require that "Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment..."

In addition to the home health services listed in section 1861(m) of the Act, and Medicaid State Plan services identified in section 1905(a) of the Act, some HHAs choose to offer additional services which are clearly non-medical in nature. Such services are typically comprised of

housekeeping, chore, or companion services. The HHA makes these services available to individuals who choose to pay for them privately, and/or individuals who are provided these services from other programs, such as a State Medicaid Home and Community-Based Services (HCBS) Waiver Program under section 1915(c) of the Social Security Act. The HHA may offer these services to current patients of the HHA (to supplement the skilled services available), to previous patients who have been discharged from skilled care, and to other individuals in the community who request them.

Many individuals who receive these non-medical services are frail, elderly or disabled and request these services because they are unable to perform them independently and need this kind of assistance to remain in the home environment.

In addition to promoting the health and safety of individuals, section 1891(b) of Social Security Act also directs the Secretary to ensure that requirements “promote the effective and efficient use of public moneys.” This statutory direction is especially pertinent in the question of whether expenses ought always to be incurred for a comprehensive assessment and care plan when the only service requested from an HHA by an individual is a chore or other clearly non-medical service. When this is the case, we will **not** consider the individual to be a patient of the HHA in the traditional sense of the term, and requirements that must apply to patients will not be required in such limited situations (e.g. the requirement for a comprehensive assessment under 42 CFR 484.55 will not apply).

Clarification

The Medicare HHA CoPs do not apply to those individuals who receive only chore services or other clearly non-medical services from the HHA. Non-medical services include chore services, companion services, household maintenance and repair services, lawn and tree services, and clearing walkways. To the extent that there is ambiguity as to whether a service is non-medical or medical, we will incline towards the medical interpretation and consider the CoPs to apply.

We consider as a medical service any hands-on service, personal care service, cueing, or activity that is in any way involved in monitoring the patient’s health condition. As soon as the HHA provides any Medicare service to an individual, or any standard service permitted by Federal law under the Medicaid State Plan (such as personal care), we will consider the individual to be receiving medical care. The CoPs will apply for all services rendered to such an individual. For example, the CoPs would apply in the case of an individual who received both chore services and personal care (regardless of funding source), but would not apply in the case of an individual receiving only chore services from the HHA.

HHAs are required as a part of the patient rights CoP to advise the patient of the extent to which payment for HHA services may be expected from Medicare or other sources and the extent to which payment may be required from the patient. The HHA should explain to a beneficiary who is ending a Medicare episode and continuing to receive chore services that Medicare does not pay for those services.

HHAs may develop their own comprehensive assessment for each required time point under the regulations at 42 CFR 484.55 for those patients receiving personal care services only regardless of payor source. The assessment may be performed any time up to and including the 60th day from the most recently completed assessment, as outlined in S&C-04-45 Clarification of Timing Requirements published September 9, 2004.

The HHA must continue to meet all state licensure and state practice regulations governing the provision of service to this population. Where state law is more restrictive than Medicare, (e.g., state law or State Medicaid HCBS requires the HHA to comply with CoPs when providing only chore services) the provider needs to apply the state law standard as well.

Note that this instruction does not supersede any current policy related to Medicare coverage and eligibility rules or instructions from the Regional Home Health Intermediaries. HHAs that provide non-medical services must also ensure that fiscal accounts are structured and maintained in conformance with CMS regulations and generally accepted accounting standards.

For questions on this memo, please contact Mavis Connolly at (410) 786-6707 or via e-mail at mconnolly@cms.hhs.gov.

Effective Date: This memorandum clarifies CMS policy. States should ensure that this clarification is reflected in their operational policies and procedures within 60 days of this memorandum.

Training: The information contained in this announcement should be shared with all survey and certification staff, their managers, the state/RO training coordinator, and all HHAs.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management