

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Centers for Medicare & Medicaid Services



**News Flash –**

CMS has instructed its contractors to delay turning on Phase 2 denial edits on the following claims to check for a valid individual National Provider Identifier (NPI) and to deny the claim when this information is missing:

- Medicare Part B **laboratory and imaging** claims and Durable Medical Equipment, Orthotics, and Supplies (DMEPOS) claims that require an ordering or referring physician/non-physician provider; and
- Part A Home Health Agency (HHA) claims that require an attending physician provider.

CMS will advise you of the new implementation date in the near future. In the interim, informational messages will continue to be sent for those claims that would have been denied had the edits been in place. See [MLN Matters® Article SE1305](#) for more information.

MLN Matters® Number: SE1308 **Revised**

Related Change Request (CR) #: NA

Related CR Release Date: NA

Effective Date: March 8, 2013

Related CR Transmittal #: NA

Implementation Date: March 8, 2013

## **Physician Delegation of Tasks in Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs)**

**Note:** This article was revised on April 30, 2013, to revise the news flash (above) to show the Phase 2 edits are delayed. All other information remains the same.

### **Provider Types Affected**

This MLN Matters® Article Special Edition (SE) is intended for physicians, non-physician practitioners (NPPs) and providers who bill for services related to beneficiaries in Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs).

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## Provider Action Needed

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The Centers for Medicare & Medicaid Services (CMS) is publishing this article to provide clarification of Federal guidance regarding Section 3108 of the Affordable Care Act (ACA), related to physician delegation of certain tasks in SNFs and NFs to NPPs (NPPs are formerly “physician extenders”) such as nurse practitioners (NPs), physician assistants (PAs), or clinical nurse specialists (CNSs).

This article addresses the authority of NPs, PAs, or CNSs to perform certain tasks such as conducting physician visits and writing orders, and to sign certifications and re-certifications.

## Background

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CMS is clarifying the regulatory differences concerning physician delegation of tasks in SNFs and NFs. The distinction in policies between these two settings (SNFs and NFs) is based in statute and regulation. Improper application of these regulations may affect a facility’s compliance and payment to providers.

The key to accurate application is to identify:

1. In which setting, SNF or NF, the physician services are being provided;
2. Whether the task must be performed personally by the physician; and
3. Whether or not the NPP is employed by the facility.

The “setting” is determined by whether the visit to a patient in a certified bed is:

1. To a resident whose care is paid for by Medicare Part A in a SNF; or
2. To a resident whose care is paid for by Medicaid in a NF.

## Key Points

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The requirements for long-term care facilities, specified in 42 CFR section 483.40(e)(2), provide that, “A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under State law or by the facility’s own policies.” The following bullets outline when and which tasks may be delegated:

### **Physician Required and other Medically Necessary Visits during a SNF Stay:**

- A required physician visit includes the initial comprehensive visit in a SNF and every alternate required visit thereafter. (See 42 CFR 483.40(c)(4).) The initial comprehensive visit in a SNF is the initial visit during which:
  - The physician completes a thorough assessment; and
  - Develops a plan of care and writes or verifies admitting orders for the resident.

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- The initial comprehensive visit must occur no later than 30 days after a resident's admission into the SNF. The physician may not delegate the initial comprehensive visit in a SNF.
- NPPs may perform other medically necessary visits prior to and after the physician's initial comprehensive visit.
- Once the physician has completed the initial comprehensive visit in the SNF, the physician may then delegate alternate visits to a PA, NP, or CNS who is licensed as such by the State and performing within the scope of practice in that State. These alternate visits, as well as medically necessary visits, may be performed and signed by the NPP (physician co-signature is not required).

#### Certifications/Re-certifications in SNFs:

- 42 CFR 424.20(e)(2) (which reflects the requirements of section 1814 (a)(2) of the Social Security Act (Act)) states that NPs and CNSs who are not employed by the facility and who are working in collaboration with a physician may sign the required initial certification and re-certifications of a beneficiary's need for SNF level of care.
- Effective with services furnished on or after January 1, 2011, physician assistants who are not employed by the facility are authorized to perform the required initial certification and periodic re-certifications of a beneficiary's need for a SNF level of care.

#### Performance of Physician Tasks in NFs:

- Similar to a SNF, the initial comprehensive visit in a NF is the initial visit during which:
  - The physician completes a thorough assessment; and
  - Develops a plan of care and writes or verifies admitting orders for the resident.
- The initial comprehensive visit must occur no later than 30 days after admission.

**Note:** At the option of the State, any required physician task in a NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a NP, CNS, or PA who is not an employee of the facility but who is working in collaboration with a physician.

In other words, NPPs that have a direct relationship with a physician and who are not employed by the facility may perform the initial comprehensive visit, any other required physician visit, and other medically necessary visits for a resident of a NF as the State allows. NPPs may also perform other medically necessary visits prior to and after the physician initial comprehensive visit.

Medically necessary visits performed by NPs, CNSs, and PAs employed by the facility may not take the place of the physician required visits, nor may the visit count towards meeting the required physician visit schedule prescribed at 42 CFR 483.40(c)(1). However:

- At the option of the State, NPs, PAs, and CNSs who are employees of the facility, while not permitted to perform visits required under the schedule prescribed at 42 CFR 483.40(c)(1),

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are permitted to perform other medically necessary visits and write orders based on these visits.

- For example, if a resident complains of a headache, the NP, CNS, or PA employed by the NF may assess the resident and write orders to address the condition;
- The physician is not required, other than by State law as applicable, to verify and sign orders written by NPPs who are employed by the facility for other medically necessary visits; and
- These medically necessary visits performed by NPs, CNSs, and PAs employed by the facility may not take the place of the physician required visits, nor may the visit count towards meeting the required physician visit schedule prescribed at 42 CFR 483.40(c)(1).

#### **NPs, PAs and CNSs must collaborate with a physician:**

- In contrast to the initial SNF visit, NPPs may provide initial NF visits and other required visits under 42 CFR 483.40(c)(3) and (f) if the State permits it;
- Required physician tasks, such as verifying and signing orders in an NF, may be delegated to a PA, NP, or CNS who is **not** an employee of the facility, but who is working in collaboration with a physician; and
- Orders written by an NPP who is employed by the NF and are written during visits that are not required visits, and are therefore “other medically necessary visits,” do not require physician co-signature except as mandated by State law.

CMS is issuing this clarification because, where a NPP is permitted to perform a medically necessary visit, the NPP is likewise permitted to write applicable orders during that visit. The Federal requirements restricting NPPs who are employed by the NF from performing a required visit, do not apply to other medically necessary visits. Thus, this guidance clarifies when an NPP employed by a NF may write orders without a countersignature unless State law requires it.

**Note:** The following regulatory language is included for reference purposes:

Section 483.40(f) Performance of Physician Tasks in NFs: At the option of the State, any required physician task in a NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician.

#### **Dually-Certified Facilities (SNF/NFs)**

In a facility where beds are dually-certified under Medicare and Medicaid, the facility must determine how the particular resident stay is being paid.

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- For residents in a Part A Medicare stay, the NPP must follow the guidelines for services in a SNF.
- For residents in a Medicaid stay, the NPP must follow the provisions outlined for care in NFs.
- In a dually-certified nursing home, any required physician task for a Medicaid beneficiary in a Medicaid stay, at the option of the State, may be performed by a NPP who is not an employee of the facility but who is working in collaboration with a physician.
- In a dually-certified nursing home and at the option of a physician, required physician visits for a Medicare beneficiary in a Part A Medicare stay may be alternated between personal visits by the physician and visits by a NPP after the physician makes the initial first visit.

The following table summarizes the requirements for NPPs to perform visits, sign orders, and sign certifications and re-certifications, when this function is permitted under the scope of practice for the State.

**Authority for NPPs to Perform Visits, Sign Orders and Sign Certifications/Re-certifications When Permitted by the State\***

	Initial Comprehensive Visit /Orders	Other Required Visits^	Other Medically Necessary Visits & Orders+	Certification/ Recertification
<b>SNFs</b>				
PA, NP & CNS employed by the facility	May not perform/ May not sign	May perform alternate visits	May perform and sign	May not sign
PA, NP & CNS not a facility employee	May not perform/ May not sign	May perform alternate visits	May perform and sign	May sign subject to State requirements
<b>NFs</b>				
PA, NP & CNS employed by the facility	May not perform/ May not sign	May not perform	May perform and sign	Not applicable ±
PA, NP & CNS not a facility employee	May perform/ May sign	May perform	May perform and sign	Not applicable ±

\*This reflects clinical practice guidelines

^Other required visits are the required monthly visits.

+Medically necessary visits may be performed prior to the initial comprehensive visit.

± This requirement relates specifically to coverage of a Part A Medicare stay, which can take place only in a Medicare-certified SNF.

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## Additional Information

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To review 42 CFR 483.40, go to <http://www.gpo.gov/fdsys/pkg/CFR-2011-title42-vol5/pdf/CFR-2011-title42-vol5-sec483-40.pdf> on the Internet.

To review 42 CFR 424.20 go to <http://www.gpo.gov/fdsys/pkg/CFR-2009-title42-vol3/pdf/CFR-2009-title42-vol3-sec424-20.pdf> on the Internet.

To review the memorandum that is the basis for this article and discusses physician delegation of tasks in SNFs and NFs go to <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-15-.pdf> on the CMS website.

To review the Section 3108 of the Affordable Care Act (page 300), Permitting Physician Assistants To Order Post-Hospital Extended Care Services, go to: <http://www.gpo.gov/fdsys/pkg/BILLS-111hr3590enr/pdf/BILLS-111hr3590enr.pdf> on the Internet

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