

CMS Manual System

Pub 100-02 Medicare Benefit Policy

Transmittal 40

Department of Health & Human Services (DHHS)

Centers for Medicare & Medicaid Services (CMS)

Date: NOVEMBER 18, 2005

Change Request 4079

SUBJECT: Skilled Nursing Facility Prospective Payment System

I. SUMMARY OF CHANGES: Effective January 1, 2005, Section 410 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended the SNF consolidated billing law to specify that certain RHC/FQHC services are excluded from SNF PPS and the requirement for consolidated billing. On August 4, 2005, CMS published the FY 2006 SNF PPS Final Rule. Included in this rule is a new definition of an indirect employment relationship for purposes of the certification and recertification by physicians of the need for a skilled level of care. Appropriate revisions to the pertinent manual sections have been made to reflect these changes.

NEW/REVISED MATERIAL

EFFECTIVE DATE: October 1, 2005

IMPLEMENTATION DATE: February 16, 2006

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R = REVISED, N = NEW, D = DELETED

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	8/Table of Contents
R	8/40/Certification and Recertification by Physicians for Extended Care Services
N	8/40.1/Who May Sign the Certificate or Recertification for Extended Care Services
R	13/30.4/RHC/FQHC for Hospital/Skilled Nursing Facility Outpatients or Inpatients

III. FUNDING:

No additional funding will be provided by CMS; Contractor activities are to be carried out within their FY 2006 operating budgets.

IV. ATTACHMENTS:

Business Requirements

Manual Instruction

**Unless otherwise specified, the effective date is the date of service.*

Attachment - Business Requirements

Pub. 100-02	Transmittal: 40	Date: November 18, 2005	Change Request 4079
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SUBJECT: Skilled Nursing Facility Prospective Payment System

I. GENERAL INFORMATION

We are updating the manual to include changes due to various legislative and regulatory changes.

A. Background: Effective January 1, 2005, Section 410 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 amended the SNF consolidated billing law to specify that certain RHC/FQHC services are excluded from SNF PPS and the requirement for consolidated billing. On August 4, 2005, CMS published the FY 2006 SNF PPS Final Rule. Included in this rule is a new definition of an “indirect employment relationship” for purposes of the certification and recertification by physicians of the need for a skilled level of care. Appropriate revisions to the pertinent manual sections have been made to reflect these changes.

B. Policy: N/A

II. BUSINESS REQUIREMENTS

“Shall” denotes a mandatory requirement

“Should” denotes an optional requirement

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)							
		F I	R H I	C a r r i e r	D M R C	Shared System Maintainers			
					F I S S	M C S	V M S	C W F	
4079.1	Contractors shall ensure that the nurse practitioner or clinical nurse specialist who signs a certification or recertification for extended care services does not have a direct or indirect employment relationship with the SNF.	X							
4079.2	For the period from October 1, 2005, through the implementation date of this transmittal, contractors need not search their files to determine whether certifications or recertifications by nurse practitioners or clinical nurse specialists comply with the requirements regarding indirect employment, but will review questionable certifications or recertifications	X							

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)							
		F I	R H I	C a r r i e r	D M E R C	Shared System Maintainers			
F I S S	M C S					V M S	C W F		
	that are called to their attention.								
4079.3	Medicare contractors shall exclude the services included within the scope of RHC and FQHC services that are described in clause (ii) of Section 1888(e)(2)(A) from the SNF consolidated billing provision consistent with the instructions found in CR 3575.	X		X					

III. PROVIDER EDUCATION

Requirement Number	Requirements	Responsibility (“X” indicates the columns that apply)							
		F I	R H I	C a r r i e r	D M E R C	Shared System Maintainers			
F I S S	M C S					V M S	C W F		
4079.4	A provider education article related to this instruction will be available at www.cms.hhs.gov/medlearn/matters shortly after the CR is released. You will receive notification of the article release via the established "medlearn matters" listserv. Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within 1 week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin and incorporated into any educational events on this topic. Contractors are free to supplement Medlearn Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X							

IV. SUPPORTING INFORMATION AND POSSIBLE DESIGN CONSIDERATIONS

A. Other Instructions: N/A

X-Ref Requirement #	Instructions

B. Design Considerations: N/A

X-Ref Requirement #	Recommendation for Medicare System Requirements

C. Interfaces: N/A

D. Contractor Financial Reporting /Workload Impact: N/A

E. Dependencies: N/A

F. Testing Considerations: N/A

V. SCHEDULE, CONTACTS, AND FUNDING

Effective Date*: October 1, 2005 Implementation Date: February 16, 2006 Pre-Implementation Contact(s): Julie Stankivic (410) 786-5725 Post-Implementation Contact(s): Regional Office	No additional funding will be provided by CMS; contractor activities are to be carried out within their FY 2006 operating budgets.
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Medicare Benefit Policy Manual

Chapter 8 - Coverage of Extended Care (SNF) Services Under Hospital Insurance

Table of Contents

(Rev. 40, 11-18-05)

[Crosswalk to Old Manual](#)

40 - Physician Certification and Recertification *for Extended Care Services*

40.1 - *Who May Sign the Certification or Recertification for Extended Care Services*

40 - Physician Certification and Recertification of *Extended Care Services*

(Rev. 40, Issued: 11-18-05; Effective: 10-01-05; Implementation: 02-16-06)

Payment for covered posthospital extended care services may be made only if a physician, nurse practitioner (NP) or clinical nurse specialist (CNS) makes the required certification, and where services are furnished over a period of time, the required recertification regarding the services furnished.

The SNF must obtain and retain the physician's NP's, or CNS's certification and recertification statements. The intermediary may request them to assist in determining medical necessity when necessary. The SNF will determine how to obtain the *required* certification and recertification statements. There is no requirement for a specific procedure or form as long as the approach *adopted by the facility* permits verification that the certification and recertification requirement is met. Certification or recertification *statements* may be entered *on* or included in forms, notes, or other records *that* a physician, NP or CNS normally signs in caring for a patient, or on a separate form. Except as otherwise specified, each certification and recertification is to be signed by a physician, NP, or CNS.

If the SNF's failure to obtain a certification or recertification is not due to a question of the necessity for the services, but to the physician's, NP's, or CNS's refusal to certify on other grounds (e.g., the physician objects in principle to the concept of certification and recertification), the SNF cannot charge the beneficiary for covered items or services. Its provider agreement precludes it from doing so.

If a physician, NP, or CNS refuses to certify, because, in his/her opinion, the patient does not need skilled care on a continuing basis for a condition for which he/she was receiving inpatient hospital services, the services are not covered and the facility can bill the patient directly. The reason for the refusal to make the certification must be documented in the SNF's records.

Certifications must be obtained at the time of admission, or as soon thereafter as is reasonable and practicable. The routine admission order established by a physician is not a certification of the necessity for post-hospital extended care services for purposes of the program. There must be a separate signed statement indicating that the patient will require on a daily basis SNF covered care.

In addition, only physicians may certify outpatient physical therapy and outpatient speech-language pathology services.

40.1 - Who May Sign the Certification or Recertification for Extended Care Services

(Rev. 40, Issued: 11-18-05; Effective: 10-01-05; Implementation: 02-16-06)

A certification or recertification statement must be signed by the attending physician or a physician on the staff of the skilled nursing facility who has knowledge of the case, or by a nurse practitioner (NP) or clinical nurse specialist (CNS) who does not have a direct or

indirect employment relationship with the facility, but who is working in collaboration with the physician.

In this context, the definition of a “direct employment relationship” is set forth in the regulations at 20 CFR 404.1005, 404.1007, and 404.1009. Under the regulations at 42 CFR 424.20(e)(2)(ii), when an NP or CNS has a direct employment relationship with an entity other than the facility, and the employing entity has an agreement with the facility that includes the provision of general nursing services under the regulations at 42 CFR 409.21, an “indirect employment relationship” exists between the NP or CNS and the facility. By contrast, such an indirect employment relationship does not exist if the agreement between the facility and the NP’s or CNS’s employer solely involves the performance of delegated physician tasks under the regulations at 42 CFR 483.40(e).

Further information regarding certification and recertification of extended *care* services, including details on the content of the certification or recertification, timing of recertifications and the impact of delays on certifications and recertifications may be found in *Pub. 100-01*, Medicare General Information, Eligibility, and Entitlement Manual, Chapter 4, “Physician Certification and Recertification of Services,” §§40 - 40.4.6.

30.4 - RHC/FQHC Services for Hospital/Skilled Nursing Facility (SNF) Outpatients or Inpatients

(Rev. 40, Issued: 11-18-05; Effective: 10-01-05; Implementation: 02-16-06)

For a more complete description of SNF PPS provisions see Pub. 100-04, the Medicare Claims Processing Manual, Chapter 6, "SNF Inpatient Billing." For further information, also see the Claims Processing *Manual*, Chapter 3, "Inpatient Hospital Billing."

A. Hospital

The hospital bundling provisions in [§1862\(a\)\(14\)](#) of the Act provides that Medicare payment may not be made to an RHC/FQHC for services provided to hospital inpatients and outpatients.

If the RHC/FQHC practitioner should provide services to a hospital patient, these services are not covered under the RHC/FQHC benefit.

RHC/FQHC services furnished to hospital patients are subject to the Medicare hospital bundling provisions and thus may not be billed by the RHC or FQHC since they are excluded from Medicare coverage under that provision. In other words, professional services furnished to hospital patients by practitioners who are compensated for the services under agreement with the RHC/FQHC cannot be billed because these are RHC/FQHC services and such services are not covered when furnished to hospital patients. However if, under the terms of its agreement with the practitioner, the RHC/FQHC does NOT compensate the practitioner for services rendered to hospital patients, the practitioner may seek Medicare payment for those services under the appropriate Medicare coverage provision.

B. SNF

Although Congress excluded physician services and several other services listed under "Medical and Other Health Services" in §1861(s) of the Act from the payment under the SNF PPS, RHC/FQHC services were not among the services that appear on the excluded list in §1888(e)(2)(A)(ii) of the Act. *Consequently, RHC/FQHC services furnished to a resident who is in a covered Part A stay as of the SNF's PPS start date (that is, as of the facility's first cost reporting period that begins on or after July 1, 1998) are included in the SNF PPS. This means that rather than submitting a separate bill for these services, the RHC or FQHC must look to the SNF for its payment.*

Prior to January 1, 2005, services furnished by an RHC/FQHC's physician and non-physician practitioners were generally considered a part of "RHC/FQHC" services, and were included within the SNF's PPS per diem payment when furnished to a Part A resident. However, under limited circumstances these services were considered to be practitioner services that were excluded from SNF consolidated billing and separately billable to Part B (See Pub. 100-02, Medicare Benefit Policy Manual, Chapter 13 Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) Services, §50.4.2B). Specifically, visits to SNF residents by an RHC/FQHC's physicians and other excluded types of medical practitioners could be separately billed to the Medicare Part B carrier in those situations where the services were furnished off the RHC's premises and the RHC did not compensate the practitioner for them. In other words, as long as the

practitioner was not under agreement with the RHC to provide services at the SNF, the practitioner could bill the Part B carrier directly for those services under his or her own Medicare provider number.

Effective with services furnished on or after January 1, 2005, section 410 of the Medicare Modernization Act (MMA) of 2003 amended the law to specify that when a SNF Part A resident receives the services of a physician (or another type of practitioner that the law identifies as being excluded from SNF consolidated billing) from an RHC or FQHC, those services are not subject to consolidated billing merely by virtue of being furnished under the auspices of the RHC or FQHC. Accordingly, under section 410 of the MMA of 2003, services otherwise included within the scope of RHC and FQHC services that are also described in clause (ii) of section 1888(e)(2)(A) are excluded from consolidated billing, effective with services furnished on or after January 1, 2005. Only this subset of RHC/FQHC services may be covered and paid separately when furnished to SNF residents during a covered Part A stay.