

Centers for Medicare and Medicaid Services
Long-Term Services and Support
Open Door Forum
Moderator: Jill Darling
April 24, 2018
2:00 p.m. ET

Operator: Good afternoon. My name is (Amy) and I will be your conference facilitator today. At this time, I would like to welcome everyone to the Centers for Medicare and Medicaid Services Long-Term Services and Support Open Door Forum.

All lines have been placed on mute to prevent any background noise. After the speakers' remarks, there will be a question-and-answer session. If you would like to ask a question during this time, simply press start then the number one on your telephone keypad. If you would like to withdraw your question, please press the pound key.

I would now like to turn the call over to Ms. Jill Darling. You may begin.

Jill Darling: Great. Thanks, (Amy). Hi, everyone. This is Jill Darling in the CMS Office of Communications. And thank you for joining us today and holding while we get more folks on the line. As always, we do appreciate your time and your patience with getting more folks in.

So, I'm sorry, one brief announcement and then we'll get into today's agenda. This Open Door Forum is not intended for the press and the remarks are not considered on the record. If you are a member of the press, you may listen in but please refrain from asking questions during the Q&A portion of the call. If you have any inquiries, please contact CMS at press@cms.hhs.gov.

And so now, I will hand it of to Kenya Cantwell, who is the technical director in the Division of Benefits and Coverage, who will give the overview of the Medicaid Home Health informational bulletin.

Kenya Cantwell: Thank you. Good afternoon, everyone. We're happy that you're able to join. We will be talking about the informational bulletin that was published on April 5th, and that was related to compliance with the Medicaid Home Health Final Regulation that we published February 2016. And that regulation did have an effective date of July 1, 2016, but our CIB that we issued now outlines the targeted discretion for enforcement that we will be making available to states so that we can work with you on coming into compliance with the final regulation.

And so, just some background on the Home Health final rule and the changes that we made back in 2016, there were two statutory changes that authorize the changes in our Home Health Regulation. The first one was the Section 6407 of the Affordable Care Act, which added the requirement that physicians document the occurrence of a face-to-face encounter with Medicaid eligible beneficiaries within reasonable timeframe. And the second change that was made that was a statutory change was Section 504 of the Medicare Access and CHIP Reauthorization Act of 2015, which amended Medicare requirements to allow certain authorized non-physician practitioners to document the face-to-face. And Medicaid – those changes also apply to Medicaid. And as result of those two statutory changes, we amended the regulatory requirements for home health at 42 CFR 440.70.

So, in the final regulation, we recognize that some of these changes would result in states having to make operational and/or budgetary accommodations. And so, to accommodate for those changes, CMS allowed for up to two years from the July 1 effective date to take into account state legislative cycles for states to come into compliance. However, since the publication of the final rule, it has become clear that there may be some state-specific challenges associated with implementation of certain provisions. And once that was recognized, we issued the final – the informational bulletin to describe the targeted enforcement discretion that we are going to use to work with states to achieve compliance.

So, specifically in the CIB, we talk about that the targeted enforcement discretion is related to certain provisions and those provisions are the face-to-

face requirements, and also the defining of medical supplies and equipment and appliances, and that was another change that the regulation had made. We, for the first time, had provided a definition, which is to be used as a framework for states with defining what items would meet medical supplies, equipment, and appliances.

The informational bulletin also lays out the fact that there are certain provisions in which we do not have flexibility to allow for a delayed compliance. Those provisions are the prohibition on requiring that the availability of all home health service is contingent upon the individual meeting, nursing or therapy, services. So, in other words, when you are making the home health benefit available, you may not require that individuals need nursing or therapy services to access certain services that are available through home health.

And for example, I would say medical supplies and equipment. So, if somebody has a need for that service, then they should be able to receive that service as long as they meet the medical necessity requirements, and that receiving those services cannot be conditioned on the receipt of nursing or therapy services.

The second provision that states must meet the requirements for, and we do not have any flexibility around delayed compliance, is on the requirements found at 440.70, which is basically the codification of CMS longstanding policy on implementing the ruling of the United States Court of Appeals for Second Circuit, the DeSario, the Thomas case. And basically what that means is the state may develop a list of pre-approved items of medical equipment as an administrative convenience but they must provide individuals with a reasonable and meaningful procedure for requesting items that do not appear on the list.

And the last area which we do not have any flexibility is around the home bound prohibition of Medicaid Home Health services and settings, in which individuals can receive Medicaid Home Health services. And so, this is an area in which we do differ from Medicare. The Medicaid Home Health benefit does not require that individuals are home bound to receive the home

health benefit, and they also can receive services where their day takes them. So, it's not limited to just being provided in the home.

We also want to remind states that the regulation sets forth a framework for coverage, and that they still do continue to have flexibility for defining the scope of the home health benefit. And so, we wanted to make sure to make point, and we can talk with states about how they can go about implementing these new provisions. The work that we're going to do with regard to our target and enforcement discretion will be a state-by-state basis.

And so, what we're asking states who have recognized that they are not in full compliance with the regulatory requirements, we're asking that you contact CMS by May 31st to request assistance so that we can work with you, and assess and identify the necessary flexibility that is needed. We need to grant any flexibility prior to July 1 of 2018.

So, that is the overview of the informational bulletin. And I have – do you have anything to add? I was just asking (Kirsten) if she had something to add. We can turn it over for questions.

Jill Darling: Yes. Thank you. (Amy), we'll open up the Q&A please.

Operator: As a reminder, ladies and gentlemen, if you would like to ask a question, please go ahead and press star then the number one on your telephone keypad. If you would like to withdraw your question, please press the pound key. Please limit your questions to one question and one follow-up to allow other participants time for questions. If you require any further follow-up, you may again press star one to re-join the queue.

Again, if you would like to ask a question, please press star then the number one on your telephone keypad.

There are no questions in queue at this time. I turn the call back over to the presenters.

Kenya Cantwell: Hi. So, I just wanted to add that I know it might have been a lot of information and you want to take a look at the informational bulletin. But if you have any questions, please send those questions to medicaidhomehealthrule@cms.hhs.gov. States that are on the call, if you are interested in seeking some flexibility, please contact your regional office.

Jill Darling: All right. Well, thanks, everyone. This is Jill Darling. We appreciate your time. You will get some time back. So, thank you and have a wonderful day.

Operator: Thank you for participating in today's Long-Term Services and Support Open Door Forum. This call will be available for replay beginning today, April 24th, at 5:00 p.m. Eastern through April 26th at midnight. The conference ID for the replay is 32640817. The number to dial for the replay is 855-859-2056. This concludes today's conference call. You may now disconnect.

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