



# COMMONWEALTH of VIRGINIA


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## MEMORANDUM

**TO:** EMILY MCCLELLAN  
Regulatory Supervisor  
Department of Medical Assistance Services

**FROM:** ABRAR AZAMUDDIN   
Assistant Attorney General

**DATE:** May 23, 2017

**SUBJECT:** Proposed Regulations Regarding Utilization Review: Home Health Services  
(12 VAC 30-60-70)

I have reviewed the proposed regulations that would amend the process for authorizing Home Health Services for Medicaid beneficiaries. Based on my review, DMAS has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act, and has not exceeded that authority.

Virginia Code §§ 32.1-324 and 32.1-325 grants to the Board of Medical Assistance Services the authority to administer and amend the plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements. It is also my view that the amendment of these regulations is exempt from the procedures of Article 2 of the APA pursuant to Va. Code § 2.2-4006(A)(4)(c).

If you have any questions or need additional information, please feel free to contact me at 804.786.6004.

cc: Kim F. Piner  
Senior Assistant Attorney General



Logged in as

Abrar Azamuddin

## Final Text

**Action:** Face-to-Face Encounter Requirement for Home Health

**Stage:** Final

5/11/17 11:19 AM [latest] ▼

### 12VAC30-60-70. Utilization control: Home health services.

A. Home health services which meet the standards prescribed for participation under Title XVIII, ~~excluding any homebound standard~~, will be supplied.

B. Home health services shall be provided by a home health agency that is licensed by the Virginia Department of Health (VDH); or that is certified by the VDH under provisions of Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act; or that is accredited either by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or by the Community Health Accreditation Program (CHAP) established by the National League of Nursing. Services shall be provided on a part-time or intermittent basis to a recipient ~~in his place of residence in any setting in which normal life activities take place. The place of residence~~ Home health services shall not be furnished to individuals residing in include a hospital, or nursing facility, intermediate care facility for individuals with intellectual disabilities or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Home health services must be ordered or prescribed by a physician and be part of a written plan of care that the physician shall review at least every 60 days.

C. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

1. Nursing services;
2. Home health aide services;
3. Physical therapy services;
4. Occupational therapy services; or
5. Speech-language pathology services.

D. General conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.

1. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

2. No payment shall be made for home health services unless a face-to-face encounter has been performed by an approved practitioner, as outlined in this subsection, with the Medicaid individual within the 90 days before the start of the

services or within the 30 days after the start of the services. The face-to-face encounter shall be related to the primary reason the Medicaid individual requires home health services.

a. The face-to-face encounter shall be conducted by one of the following approved practitioners:

i. A physician licensed to practice medicine;

ii. A nurse practitioner or clinical nurse specialist within the scope of their practice under state law and working in collaboration with the physician who orders the Medicaid individual's services;

iii. A certified nurse midwife within the scope of their practice under state law;

iv. A physician assistant within the scope of their practice under state law and working under the supervision of the physician who orders the Medicaid individual's services; or

v. For Medicaid individuals admitted to home health immediately after an acute or post-acute stay, the attending acute or post-acute physician.

b. The practitioner performing the face-to-face encounter shall document the clinical findings of the encounter in the Medicaid individual's record and communicate the clinical findings of the encounter to the ordering physician.

c. Face-to-face encounters may occur through telehealth, which shall not include by phone or e-mail.

23. When a patient is admitted to home health services a start-of-care comprehensive assessment must be completed no later than five calendar days after the start of care date.

34. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The initial plan of care (certification) must be reviewed by the attending physician, or physician designee. The physician must sign the initial certification before the home health agency may bill DMAS.

45. A physician shall review and recertify the plan of care every 60 days. A physician recertification shall be performed within the last five days of each current 60-day certification period, i.e., between and including days 56-60. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. The physician must sign the recertification before the home health agency may bill DMAS.

56. The physician-orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

67. A written physician's statement located in the medical record must certify that:

a. The patient needs licensed nursing care, home health aide services, physical or occupational therapy, or speech-language pathology services;

b. A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and

c. These services were furnished while the individual was under the care of a physician.

78. The plan of care shall contain at least the following information:

- a. Diagnosis and prognosis;
- b. Functional limitations;
- c. Orders for nursing or other therapeutic services;
- d. Orders for home health aide services, when applicable;
- e. Orders for medications and treatments, when applicable;
- f. Orders for special dietary or nutritional needs, when applicable; and
- g. Orders for medical tests, when applicable, including laboratory tests and x-rays.

E. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Such post payment review audits may be unannounced. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

F. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

1. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.
2. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.
3. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.
  - a. Physical therapy services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with a physical therapist licensed by the Board of Physical Therapy. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Physical Therapy, or a physical therapy assistant who is licensed by the Board of Physical Therapy and is under the direct supervision of a physical therapist licensed by the Board of Physical Therapy. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

b. Occupational therapy services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine, or an occupational therapy assistant who is certified by the National Board for Certification in Occupational Therapy under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist, as defined above, who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

c. Speech-language pathology services shall be directly and specifically related to an active written plan of care approved by a physician after any needed consultation with a speech-language pathologist licensed by the Virginia Department of Health Professions, Virginia Board of Audiology and Speech-Language Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Virginia Department of Health Professions, Virginia Board of Audiology and Speech-Language Pathology.

4. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.