Supporting Statement – Part A
Medicaid Program Face-to-Face Requirements for Home Health Services and Supporting Regulations under 42 CFR 440.70(f) and (g)
CMS-10609, OMB 0938-New

Background

Section 6407(a) of the Affordable Care Act (as amended by section 10605) added new requirements to section 1814(a)(2)(C) of the Act under Part A of the Medicare program, and section 1835(a)(2)(A) of the Act, under Part B of the Medicare program, that the physician, or certain allowed NPPs, document a face-to-face encounter with the beneficiary (including through the use of telehealth, subject to the requirements in section 1834(m) of the Act), before making a certification that home health services are required under the Medicare home health benefit. Section 6407(d) of the Affordable Care Act, provides that the requirements for face-to-face encounters shall apply in the case of physicians making certifications for home health services under title XIX of the Act in the same manner and to the same extent as such requirements apply in the case of physicians making such certifications under title XVIII of such Act.

Section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114-10) amended the underlying Medicare requirements at section 1834(a)(11)(B)(ii) of the Social Security Act (the Act) to allow certain authorized non-physician practitioners (NPP) to document the face-to-face encounter. This rule includes conforming changes to Medicaid requirements to reflect the revisions made by MACRA to the underlying Medicare face-to-face encounter requirements.

A. Justification

1. Need and Legal Basis

Section 6407 of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act), (Pub. L.111-148, enacted on March 23, 2010) and the Section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), (Pub. L. 114-10, enacted on April 16, 2015) set forth the requirement that the physician, or certain allowed nonphysician practitioners (NPPs), document a face-to-face encounter with the individual, prior to the physician making a certification that home health services are required.

The final documentation requirements published on February 2, 2016, under 42 CFR 440.70(f)(5) and (g)(1).

The provision is necessary to increase program integrity and to ensure that statutory requirements are being met.

The requirements are effective July 1, 2016. However, we are delaying compliance with this

rule for up to one year if legislature has met in that year, otherwise two years. States will be expected to be in compliance by July 1, 2017 or July 1, 2018 based on legislative timeframes. In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), which the Secretary determines requires state legislation in order for the respective plan to meet one or more additional requirements imposed by this rule, the respective state shall not be regarded as failing to comply with the requirements of this rule solely on the basis of its failure to meet such an additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this rule. For purposes of the previous sentence, in the case of a state that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the state legislature.

2. Information Users

Documentation of the face-to-face encounter will be used by the physicians as part of the individual's medical record as well as the home health agencies and medical equipment providers furnishing services.

3. Use of Information Technology

We have not proscribed the acceptable forms of documentation. From the federal perspective, our goal is to ensure that required documentation by the state is sufficient to make the linkage between the individual's health conditions, the services ordered, an appropriate face-to-face encounter, and actual service provision. We encourage documentation requirements established by states to meet this goal, while not imposing additional actual or perceived administrative burden. Electronic Health Records may be of use to support the operational requirements. An electronic signature of the practitioner who completed the documentation is acceptable.

4. Duplication of Efforts

We have aligned our documentation requirements, to the greatest extent possible, with Medicare documentation requirements. Additionally, as indicated in response to comments, the Medicare face-to-face encounter documentation will meet the Medicaid face-to-face requirement.

5. Small Businesses

The documentation provision will not have a significant economic impact on a substantial number of small entities. Entities affected by this rule should already be administering these changes for Medicare purposes as the statutory change was effective in 2010. Entities should already have systems in place to accommodate this change for the Medicaid population.

6. Less Frequent Collection

This collection is a statutory requirement. If collection is not conducted as required by statute, there is a risk of increased fraud, waste and abuse.

7. Special Circumstances

There are no special circumstances or impediments related to the proposed information collections.

8. Federal Register/Outside Consultation

The NPRM served as the 60-day notice which published in the Federal Register on July 12, 2011 (76 FR 41032, RIN 0938-AQ36, CMS-2348-P). Public comments were received. A summary of the comments and our response is attached to this PRA package.

9. Payments/Gifts to Respondents

N/A

10. Confidentiality

N/A

11. Sensitive Questions

There are no special circumstances as this information collection does not do any of the following:

-Require respondents to report information to the agency more often than quarterly;

-Require respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

-Require respondents to submit more than an original and two copies of any document;

-Require respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;

-Is connected with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study,

-Require the use of a statistical data classification that has not been reviewed and approved by OMB;

-Includes a pledge of confidentiality that is not supported by authority established in statue or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

-Require respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect die information's confidentiality to the extent permitted by law.

12. Burden Estimates (Hours & Wages)

Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2014 National Occupational Employment and Wage Estimates for all salary estimates (www.bls.gov/oes/current/oes_nat.htm). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage ($/hr)	Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Family and General Practitioners	29-1062	89.58	89.58	179.16
Nurse Practitioners	29-1171	47.11	47.11	94.22
Physician Assistants	29-1071	46.77	46.77	93.54

**Note: The mean hourly wage estimates are consistent with the hourly wages set out in the final rule. They are also consistent with BLS' most up to date figures that were available at the time of the rule's publication.*

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Burden Estimates

Section 440.70(f) and (g) requires that physicians (or for medical equipment, authorized non-physician practitioners (NPPs) including nurse practitioners, clinical nurse specialists and physician assistants) document that there was a face-to-face encounter with the Medicaid beneficiary. The burden associated with this requirement is the time and effort to complete this documentation. The burden also includes writing, typing, or dictating the face-to-face

documentation and signing/dating the documentation. In this regard, we estimated 10 minutes for each encounter. We also estimated that there are approximately 1,143,443 initial home health episodes in a given year (this estimate is based on our 2008 claims data which is also our most recent data). Due to the lack of data for each provider type, we are dividing our 1,143,443 episode estimate into 3 equal parts of 381,147.67 for each of the three respondent types (family and general practitioners, nurse practitioners, and physician assistants). Our estimated burden for documenting, signing, and dating the beneficiary's face-to-face encounter is 190,955. We acknowledged that this figure is inflated by instances in which the physician conducted the face-to-face encounter with the beneficiary, making this second 10-minute documentation burden unnecessary.

The estimated cost to document the face-to-face encounter, which varies by practitioner, consists of $29.74 (0.167 hr x $179.16/hr) for a family and general practitioner, $15.64 (0.167 hr x $94.22/hr) for a nurse practitioner, and $15.52 (0.167 hr x $93.54/hr) for a physician assistant. We estimated an aggregated cost of $23,355,067.

Summary of Annual Burden Estimates

Annual Recordkeeping and Reporting Requirements

Regulation Section(s) in Title 42 of the CFR	**Respondents**	**Total Responses**	**Time per Response**	**Total Annual Burden (hr)**	**Labor Rate ($/hr)**	**Total Capital/ Maintenance Costs ($)**	**Total Cost ($)**
440.70(f) and (g)	381,147.67	381,147.67	10 min (0.167 hr)	63,651.66	179.16	0	11,403,831.41
	381,147.67	381,147.67	10 min (0.167 hr)	63,651.66	94.22	0	5,997,259.41
	381,147.67	381,147.67	10 min (0.167 hr)	63,651.66	93.54	0	5,953,976.28
Total	1,143,443.01	1,143,443.01	10 min (0.167 hr)	190,954.98	n/a	0	23,355,067.10

Information Collection Instruments/Guidance Documents

Not applicable.

13. Capital Costs

There are no capital costs associated with this rule. There are no costs associated with generating, maintaining, and disclosing or providing the information or The documentation requirements are customary business practice that physicians have already implemented since

at least 2010 when the law became effective.

14. Cost to Federal Government

    There are no costs to the Federal government. There is no collection being provided to the Federal government.

15. Changes to Burden

    We finalized the burden as proposed.

16. Publication/Tabulation Dates

    There are no collections of information whose results will be published.

17. Expiration Date

    The expiration date will be displayed.

18. Certification Statement

    We are not requesting any exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1.

B. Collection of Information Employing Statistical Methods

There are no statistical methods associated with this collection.