

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 0938-1319

**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 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 2019 information collection request does not propose any program changes nor any changes to our currently approved time estimates. However, we have adjusted our cost estimates based on more recent BLS wage data (see below). Our currently approved package used 2014 BLS wage estimates while this 2019 information collection request uses 2018 wage data.

**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 rule's requirements are necessary to increase program integrity and to ensure that statutory requirements are being met.

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 provided any voluntary or mandatory 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, 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 small entities. . Entities affected by the face-to-face documentation requirements 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

Outside of the need for the physician (or certain NPPs) to document a face-to-face encounter with the individual, there are no other special circumstances that would require an information collection to be conducted in a manner that requires respondents to:

- Report information to the agency more often than quarterly;
- Prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Submit more than an original and two copies of any document;
- Retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- Collect data in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study,

- Use a statistical data classification that has not been reviewed and approved by OMB;
- Include a pledge of confidentiality that is not supported by authority established in statute 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
- Submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. Federal Register/Outside Consultation

The 60-day notice published in the Federal Register on September 23, 2019 (84 FR 49738). No comments were received.

The 30-day notice published in the Federal Register on December 18, 2019 (84 FR 69380).

9. Payments/Gifts to Respondents

N/A

10. Confidentiality

This applies to the extent that HIPAA requires confidentiality of medical records.

11. Sensitive Questions

There are no sensitive questions associated with this collection. Specifically, the collection does not solicit questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. Burden Estimates (Hours & Wages)

*Wage Estimates*

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all salary estimates ([www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm)). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent), and the adjusted hourly wage.

| Wage Estimates             |                 |                          |                                      |                              |
|----------------------------|-----------------|--------------------------|--------------------------------------|------------------------------|
| Occupation Title           | Occupation Code | Mean Hourly Wage (\$/hr) | Fringe Benefits and Overhead (\$/hr) | Adjusted Hourly Wage (\$/hr) |
| <a href="#">Family and</a> | 29-1062         | 101.82                   | 101.82                               | 203.64                       |

|                              |         |       |       |        |
|------------------------------|---------|-------|-------|--------|
| <u>General Practitioners</u> |         |       |       |        |
| Nurse Practitioners          | 29-1171 | 52.90 | 52.90 | 105.80 |
| Physician Assistants         | 29-1071 | 52.13 | 52.13 | 104.26 |

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, 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 estimate that it will take 10 minutes for each encounter. We also estimate 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 \$34.00 (0.167 hr x \$203.64/hr) for a family and general practitioner, \$17.67 (0.167 hr x \$105.80/hr) for a nurse practitioner, and \$17.41 (0.167 hr x \$104.26/hr) for a physician assistant. We estimated an aggregated cost of \$26,332,691.74.

*Summary of Annual Burden Estimates*

Annual Recordkeeping and Reporting Requirements

| <b>Regulation Section(s) in Title 42 of the CFR</b> | <b>Respondents</b> | <b>Total Responses</b> | <b>Time per Response</b> | <b>Total Annual Time (hr)</b> | <b>Labor Rate (\$/hr)</b> | <b>Total Capital/Maintenance Costs (\$)</b> | <b>Total Cost (\$)</b> |
|---|--------------------|------------------------|--------------------------|-------------------------------|---------------------------|---|------------------------|
| 440.70(f) and (g)                                   | 381,147.67         | 381,147.67             | 10 min (0.167)           | 63,651.66                     | 203.64                    | 0   | 12,962,024.04          |

|       |              |              |                         |            |            |   |               |
|-------|--------------|--------------|-------------------------|------------|------------|---|---------------|
|       |              |              | hr)                     |            |            |   |               |
|       | 381,147.67   | 381,147.67   | 10 min<br>(0.167<br>hr) | 63,651.66  | 105.8<br>0 | 0 | 6,734,345.63  |
|       | 381,147.67   | 381,147.67   | 10 min<br>(0.167<br>hr) | 63,651.66  | 104.2<br>6 | 0 | 6,636,322.07  |
| Total | 1,143,443.01 | 1,143,443.01 | 10 min<br>(0.167<br>hr) | 190,954.98 | n/a        | 0 | 26,332,691.74 |

### *Information Collection Instruments/Guidance Documents*

Not applicable. We have not provided any voluntary or mandatory 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.

### 13. Capital Costs

There are no capital costs associated with the requirements set out above under section 12. There are no costs associated with generating, maintaining, and disclosing or providing the information. 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 information being provided to the Federal government.

### 15. Changes to Requirements and Burden Estimates

This 2019 information collection request does not propose any program changes nor any changes to our currently approved time estimates. However, we have adjusted our cost estimates based on more recent BLS wage data (see below). Our currently approved package used 2014 BLS wage estimates while this 2019 information collection request uses 2018 wage data.

#### Wage Adjustments

| Occupation Title                                 | Occupation Code | 2016 Adjusted Hourly Wage (\$/hr) | 2019 Adjusted Hourly Wage (\$/hr) | Difference (\$/hr) |
|--|-----------------|-----------------------------------|-----------------------------------|--------------------|
| <a href="#">Family and General Practitioners</a> | 29-1062         | 179.16                            | 203.64                            | +24.48             |
| Nurse Practitioners                              | 29-1171         | 94.22                             | 105.80                            | +11.58             |

| Occupation Title     | Occupation Code | 2016 Adjusted Hourly Wage (\$/hr) | 2019 Adjusted Hourly Wage (\$/hr) | Difference (\$/hr) |
|----------------------|-----------------|-----------------------------------|-----------------------------------|--------------------|
| Physician Assistants | 29-1071         | 93.54                             | 104.26                            | +10.72             |

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.