



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 13-15-NH

DATE: March 8, 2013

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Physician Delegation of Tasks in Skilled Nursing Facilities (SNFs) and
Nursing Facilities (NFs)

This memorandum replaces Survey and Certification memorandum S&C-04-08 dated November 13, 2003, which discusses physician delegation of tasks in SNFs and NFs.

Memorandum Summary

- **Guidance revision:** This memo provides clarification of Federal guidance related to physician delegation of certain tasks in SNFs and NFs to non-physician practitioners (NPPs; formerly “physician extenders”) such as nurse practitioners, physician assistants, or clinical nurse specialists
- **Implements Section 3108 of the Affordable Care Act (ACA):** Implements section 3108 of the Affordable Care Act, which adds physician assistants to the list of practitioners that can perform Skilled Nursing Facility (SNF) level of care certifications and re-certifications.
- **Co-signing of orders:** Clarifies policy on co-signing orders in SNFs and NFs.

A. Background

The Centers for Medicare & Medicaid Services (CMS) is clarifying for State survey agencies and providers the regulatory differences concerning physician delegation of tasks in SNFs and NFs. The distinction in policies between these two settings (SNFs and NFs) is based in statute and regulation. Improper application of these regulations may affect a facility’s compliance and may also affect payment to providers. The key to accurate application is to identify:

- (1) in which setting, SNF or NF, the physician services are being provided;
- (2) whether the task must be performed personally by the physician; and
- (3) whether or not the non-physician practitioner (NPP) is employed by the facility.

The “setting” is determined by whether the visit to a patient in a certified bed is to a resident whose care is paid for by Medicare Part A in a SNF or under Medicaid in a NF. This memorandum addresses the authority of NPPs (i.e., nurse practitioners, physician assistants, or

clinical nurse specialists) to perform certain tasks such as conducting physician visits and writing orders, and to sign certifications and re-certifications.

B. Physician Delegation of Tasks in Skilled Nursing Facilities (SNFs)

Under the requirements for long-term care facilities, 42 C.F.R. §483.40(e)(2) provides that, “A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.”

Physician Required and other Medically Necessary Visits in SNFs: Under 42 C.F.R. §483.40(c)(3), all required physician visits must be made by the physician personally and cannot be delegated. A required physician visit includes the initial comprehensive visit in a SNF and every alternate required visit thereafter, as required in 42 C.F.R. §483.40(c)(4). The initial comprehensive visit in a SNF is the initial visit during which the physician completes a thorough assessment, develops a plan of care and writes or verifies admitting orders for the resident. Under 42 C.F.R. §483.40(c)(1), the initial comprehensive visit must occur no later than 30 days after a resident’s admission into the SNF. Further, under 42 C.F.R. §483.40(c)(4) and (e), the physician may not delegate the initial comprehensive visit in a SNF. Non-physician practitioners may perform other medically necessary visits prior to and after the physician’s initial comprehensive visit.

Once the physician has completed the initial comprehensive visit in the SNF, the physician may then delegate alternate visits to a Physician Assistant (PA), Nurse Practitioner (NP), or Clinical Nurse Specialist (CNS) who is licensed as such by the State and performing within the scope of practice in that State, as permitted under 42 C.F.R. §483.40(c)(4). These alternate visits, as well as medically necessary visits, may be performed and signed by the NPP (physician co-signature is not required).

Certifications/Re-certifications in SNFs: Under 42 C.F.R. §424.20, certifications and re-certifications are required to verify that a resident requires daily skilled nursing care or rehabilitation services. Section 424.20(e)(2) (which reflects the requirements of section 1814 (a)(2) of the Social Security Act (Act)) states that NPs and CNSs who are not employed by the facility and who are working in collaboration with a physician may sign the required initial certification and re-certifications when permitted under the scope of practice for the State. Effective with services furnished on or after January 1, 2011, Section 1814(a)(2) of the Act, which was amended by section 3108 of the Affordable Care Act, authorizes physician assistants who are not employed by the facility to perform the required initial certification and periodic re-certifications of a beneficiary’s need for a SNF level of care.

C. Performance of Physician Tasks in Nursing Facilities (NFs)

Physician Required and Other Medically Necessary Visits in NFs: Similar to a SNF, the initial comprehensive visit in a NF is the initial visit during which the physician completes a thorough assessment, develops a plan of care and writes or verifies admitting orders for the resident, which must take place no later than 30 days after admission. Section 483.40(f) provides that “At the

option of the State, any required physician task in a NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician.” In other words, NPPs that have a direct relationship with a physician and who are not employed by the facility may perform the initial comprehensive visit, any other required physician visit, and other medically necessary visits for a resident of a NF as the State allows. NPPs may also perform other medically necessary visits prior to and after the physician initial comprehensive visit.

At the option of the State, NPs, PAs, and CNSs who are employees of the facility, while not permitted to perform visits required under the schedule prescribed at 42 C.F.R. §483.40(c)(1), are permitted to perform other medically necessary visits and write orders based on these visits. For example, if a resident complains of a headache, the NP, CNS, or PA employed by the NF may assess the resident and write orders to address the condition. The physician is not required, other than by State law as applicable, to verify and sign orders written by NPPs who are employed by the facility for other medically necessary visits. These medically necessary visits performed by NPs, CNSs, and PAs employed by the facility may not take the place of the physician required visits, nor may the visit count towards meeting the required physician visit schedule prescribed at 42 C.F.R. §483.40(c)(1).

In contrast to the initial SNF visit, NPPs may provide initial NF visits and other required visits under 42 C.F.R. §§483.40(c)(3) and (f) if the State permits it. Under these regulations, required physician tasks, such as verifying and signing orders in an NF, may be delegated to a PA, NP, or CNS who is **not** an employee of the facility but who is working in collaboration with a physician. Orders written by an NPP who is employed by the NF and are written during visits that are not required visits, and are therefore “other medically necessary visits,” do not require physician co-signature except as mandated by State law.

We are issuing this clarification because, where a NPP is permitted to perform a medically necessary visit, the NPP is likewise permitted to write applicable orders during that visit. The Federal requirements restricting NPPs who are employed by the NF from performing a *required visit*, do not apply to *other medically necessary visits*. Thus, this guidance clarifies when an NPP employed by a NF may write orders without a countersignature unless State law requires it.

NOTE: Regulatory language is included for reference purposes:

§483.40(f) Performance of Physician Tasks in NFs

At the option of the State, any required physician task in a NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician.

D. Dually-Certified Facilities (SNF/NFs)

While the regulations do not address dually-certified SNF/NFs directly, the law is clear about who can perform tasks in a SNF and in a NF. In a facility where beds are dually-certified under

Medicare and Medicaid, the facility must determine how the particular resident stay is being paid. For residents in a Part A Medicare stay, the NPP must follow the guidelines for services in a SNF. For residents in a Medicaid stay, the NPP must follow the provisions outlined for care in NFs. As such, in a dually-certified nursing home, any required physician task for a Medicaid beneficiary in a Medicaid stay certified bed, at the option of the State, may be performed by a NPP who is not an employee of the facility but who is working in collaboration with a physician. In addition, in a dually-certified nursing home and at the option of a physician, required physician visits for a Medicare beneficiary in a Part A Medicare stay certified bed may be alternated between personal visits by the physician and visits by a NPP after the physician makes the initial first visit.

Table 1 below summarizes the requirements for non-physician practitioners to perform visits, sign orders, and sign certifications and re-certifications, when this function is permitted under the scope of practice for the State.

Table 1: Authority for Non-physician Practitioners to Perform Visits, Sign Orders and Sign Certifications/Re-certifications When Permitted by the State*

| | Initial Comprehensive Visit /Orders | Other Required Visits[^] | Other Medically Necessary Visits & Orders⁺ | Certification/ Recertification |
|--|--|--|--|--|
| SNFs | | | | |
| PA, NP & CNS employed by the facility | May not perform/ May not sign | May perform alternate visits | May perform and sign | May not sign |
| PA, NP & CNS not a facility employee | May not perform/ May not sign | May perform alternate visits | May perform and sign | May sign subject to State Requirements |
| NFs | | | | |
| PA, NP, & CNS employed by the facility | May not perform/ May not sign | May not perform | May perform and sign | Not applicable ± |
| PA, NP, & CNS not a facility employee | May perform/ May sign | May perform | May perform and sign | Not applicable ± |

*This reflects clinical practice guidelines

[^]Other required visits are the required monthly visits.

⁺Medically necessary visits may be performed prior to the initial comprehensive visit.

± This requirement relates specifically to coverage of a Part A Medicare stay, which can take place only in a Medicare-certified SNF.

For questions on this memorandum, please contact Alice Bonner at alice.bonner@cms.hhs.gov.

Effective Date: This policy is in effect immediately.

Training: This policy should be shared with all appropriate survey and certification staff, their managers, and the state/regional office training coordinator.

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management