

## Home Health Authorization: Changes Pursuant to CARES Act

### ***Federal Background:***

#### ***CARES ACT & Rulemaking Process:***

On March 27, 2020 the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law. Section 3708 of the CARES Act permanently authorizes nurse practitioners, clinical nurse specialists, and physician assistants to certify for Medicare and Medicaid home health care services in accordance with state law. Per that legislation, CMS had six months from the passage of the legislation to implement this section via rulemaking. On May 8, 2020 CMS published an interim final rule which permanently implements Section 3708 of the CARES Act, retroactively effective to March 1, 2020. However, these policies do refer back to state law.

### ***Official Resources:***

- **CARES ACT:** <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>
- **CMS 2<sup>nd</sup> Interim Final Rule:** <https://www.federalregister.gov/documents/2020/05/08/2020-09608/medicare-and-medicaid-programs-basic-health-program-and-exchanges-additional-policy-and-regulatory>
- **CMS COVID-19 FAQ's- Beginning P.103:** <https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf>
- **Medicare Learning Network:** <https://www.cms.gov/files/document/2020-05-07-mlnc.pdf>.
- **Medicare Regulations:** <http://federal.elaws.us/cfr/title42.part484>
- **Medicaid Regulations:** <http://federal.elaws.us/cfr/title42.part440.section440.70>

### ***State Specific Issues:***

**Washington:** Suggested updates to existing state codes and regulations to align the state with recent federal changes. Areas recommended to be removed are ~~struck-through-in-red~~, recommended additions are in **red bold text**.

**Rule Making:** <https://www.hca.wa.gov/about-hca/apple-health-medicaid-rulemaking>

Effective on April 3, Apple Health (Washington Medicaid) put in place emergency adoption of rule making (via CR103E) <https://www.hca.wa.gov/assets/103E-20-09-016.pdf> for the purposes of “amending WAC 182-543-0500 and WAC 182-551-2040 to allow ordering of home health services, including medical supplies, by nonphysician practitioners” effective until July 29, 2020. On May 20, the agency filed a CR 101 <https://www.hca.wa.gov/assets/101-20-11-075.pdf> as a notice of possible rulemaking for the purposes of “amending WAC 182-543-0500 and WAC 182-551-2040 to allow ordering of home health services, including medical supplies, by certain nonphysician practitioners. During the course of this review, the agency may identify additional related changes that are required in order to improve clarity or update policy.” This begins the permanent rule-making process. On July 30, the agency filed another CR103E <https://www.hca.wa.gov/assets/103E-20-16-083.pdf> effective until November 27, 2020.

**Recommendation:** We recommend continued monitoring of the rule making process to ensure the final rule is consistent with the CARES Act, and fully removes all barriers to NPs ordering home health.