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 non-physician practitioners (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 NPPs to document the face-to-face encounter.

Section 3708 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act expanded 42 CFR parts 409, 424.22, 424.507(b), 440.70 and part 484 to permit nurse practitioners (NPs), clinical nurse specialists (CNSs), and physician assistants (PAs) to certify the need for home health services and to order services in the Medicare and Medicaid programs. As such, under CMS-5531-IFC, CMS amended 42 CFR 440.70 to remove the requirement that the NPPs have to communicate the clinical finding of the face-to-face encounter to the ordering physician. With expanding authority to order home health services, the CARES Act also provided that such practitioners are now capable of independently performing the face-to-face encounter for the patient for whom they are the ordering practitioner, in accordance with state law.

This 2023 collection of information request does not propose any program changes or changes to our currently approved time estimates. However, we have adjusted our cost estimates based on more recent BLS wage data. Our currently approved package used 2018 BLS wage estimates while this 2023 iteration uses 2021 wage data. See section 15 of this Supporting Statement for details.

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.

CMS codified these statutory requirements into a federal regulation at 42 CFR 440.70(f) and (g). These requirements are necessary to increase program integrity and to ensure that statutory requirements are being met.

Subsequent to the above-mentioned legislation and regulation, Section 3708 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, (Pub. L. 116-136, enacted on March 27, 2020) expanded the practitioners authorized to order home health services to include various NPPs and removed the requirement that these NPPs communicate the face-to-face findings with an ordering physician. The CARES Act changes do not affect the burden estimates for the documentation of the face-to-face encounter captured below.

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 practitioner 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 the 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 and 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 October 24, 2022 (87 FR 64224). One comment was received. We agree with the commenter's recommendations and have amended this Supporting Statement to reflect the CARES Act changes.

The 30-day notice published in the Federal Register on February 7, 2023 (88 FR 7974). Comments must be received by March 9, 2023.

9. Payments/Gifts to Respondents

N/A

10. Confidentiality

This applies to the extent that HIPPAA 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. Collection of Information Requirements and Burden Estimates

Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2021 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 BLS' mean hourly wage, our estimated cost of fringe benefits and overhead (calculated at 100 percent), and our adjusted hourly wage.

Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage ($/hr)	Fringe Benefits and Overhead ($/hr)	Adjusted Hourly Wage ($/hr)
Family Medicine Physicians	29-1215	113.43	113.43	226.86
General Internal Medicine Physicians	29-1216	116.44	116.44	232.88
Family and General Physicians (Average of 29-1215 and 29-1216)				229.88
Nurse Practitioners	29-1171	56.75	56.75	113.50
Physician Assistants	29-1071	57.43	57.43	114.86

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.

Collection of Information Requirements and Associated Burden Estimates

Section 440.70(f) and (g) requires that physicians and 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 (0.167 hr) for each encounter. We also estimate that there are approximately 2,495,355 initial home health episodes in a given year (this estimate is based on our 2019 claims data which is also our most recent data). Due to the lack of data for each provider type, we are dividing our 2,495,355 episode estimate into 3 equal parts of 831,785 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 416,724.

The estimated cost to document the face-to-face encounter, which varies by practitioner, consists of $38.39 (0.167 hr x $229.88/hr) for a family and general practitioner, $18.95 (0.167 hr x $113.50/hr) for a nurse practitioner, and $19.18 (0.167 hr x $114.86/hr) for a physician assistant. We estimated an aggregated cost of $63,653,247.75.

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 Time (hr)**	**Labor Rate ($/hr)**	**Total Capital/ Maintenance Costs ($)**	**Total Cost ($)**
440.70(f) and (g)	831,785	831,785	10 min (0.167 hr)	138,908	229.88	0	31,932,193
	831,785	831,785	10 min (0.167 hr)	138,908	113.50	0	15,766,069
	831,785	831,785	10 min (0.167 hr)	138,908	114.86	0	15,954,984
Total	2,495,355	2,495,355	10 min (0.167 hr)	416,724	Varies	0	63,653,245

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 practitioner 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 statutory requirement 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 2022 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 2022 information collection request uses 2021 wage data.

Wage Adjustments

Occupation Title	Occupation Code	2019 Adjusted Hourly Wage ($/hr)	2021 Adjusted Hourly Wage ($/hr)	Difference ($/hr)
Family and General Physicians (Combined)	Combined in 2021 (29-1215 and 29-1216) and Averaged	203.64	229.88 (ave)	+26.24
Nurse Practitioners	29-1171	105.80	113.50	+7.70
Physician Assistants	29-1071	104.26	114.86	+10.60

*Formerly (in 2019) Family and General Practitioners (29-1062).

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.