

(e) Case management may include contacts with non-eligible individuals that are directly related to the identification of the eligible individual's needs and care, for the purposes of helping the eligible individual access services, identifying needs and supports to assist the eligible individual in obtaining services, providing case managers with useful feedback, and alerting case managers to changes in the eligible individual's needs.

[72 FR 68091, Dec. 4, 2007, as amended at 74 FR 31196, June 30, 2009]

§ 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

(a) *Transportation.* (1) "Transportation" includes expenses for transportation and other related travel expenses determined to be necessary by the agency to secure medical examinations and treatment for a recipient.

(2) Except as provided in paragraph (a)(4), transportation, as defined in this section, is furnished only by a provider to whom a direct vendor payment can appropriately be made by the agency.

(3) "Travel expenses" include—

(i) The cost of transportation for the recipient by ambulance, taxicab, common carrier, or other appropriate means;

(ii) The cost of meals and lodging en route to and from medical care, and while receiving medical care; and

(iii) The cost of an attendant to accompany the recipient, if necessary, and the cost of the attendant's transportation, meals, lodging, and, if the attendant is not a member of the recipient's family, salary.

(4) Non-emergency medical transportation brokerage program. At the option of the State, and notwithstanding § 431.50 (statewide operation) and § 431.51 (freedom of choice of providers) of this chapter and § 440.240 (comparability of services for groups), a State plan may provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide non-emergency medical transportation services for individuals eligible for medical assistance under the State plan who need access to medical care or services, and have no other means of

transportation. These transportation services include wheelchair vans, taxis, stretcher cars, bus passes and tickets, secured transportation containing an occupant protection system that addresses safety needs of disabled or special needs individuals, and other forms of transportation otherwise covered under the state plan.

(i) Non-emergency medical transportation services may be provided under contract with individuals or entities that meet the following requirements:

(A) Is selected through a competitive bidding process that is consistent with 45 CFR 92.36(b) through (i) and is based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs.

(B) Has oversight procedures to monitor beneficiary access and complaints and ensure that transportation is timely and that transport personnel are licensed, qualified, competent, and courteous.

(C) Is subject to regular auditing and oversight by the State in order to ensure the quality and timeliness of the transportation services provided and the adequacy of beneficiary access to medical care and services.

(D) Is subject to a written contract that imposes the requirements related to prohibitions on referrals and conflicts of interest described at § 440.170(a)(4)(ii), and provides for the broker to be liable for the full cost of services resulting from a prohibited referral or subcontract.

(ii) Federal financial participation is available at the medical assistance rate for the cost of a written brokerage contract that:

(A) Except as provided in paragraph (a)(4)(ii)(B) of this section, prohibits the broker (including contractors, owners, investors, Boards of Directors, corporate officers, and employees) from providing non-emergency medical transportation services or making a referral or subcontracting to a transportation service provider if:

(1) The broker has a financial relationship with the transportation provider as defined at § 411.354(a) of this chapter with "transportation broker" substituted for "physician" and "non-

emergency transportation” substituted for “DHS”; or

(2) The broker has an immediate family member, as defined at §411.351 of this chapter, that has a direct or indirect financial relationship with the transportation provider, with the term “transportation broker” substituted for “physician.”

(B) Exceptions: The prohibitions described at clause (A) of this paragraph do not apply if there is documentation to support the following:

(1) Transportation is provided in a rural area, as defined at §412.62(f), and there is no other available Medicaid participating provider or other provider determined by the State to be qualified except the non-governmental broker.

(2) Transportation is so specialized that there is no other available Medicaid participating provider or other provider determined by the State to be qualified except the non-governmental broker.

(3) Except for the non-governmental broker, the availability of other Medicaid participating providers or other providers determined by the State to be qualified is insufficient to meet the need for transportation.

(4) The broker is a government entity and the individual service is provided by the broker, or is referred to or subcontracted with another government-owned or operated transportation provider generally available in the community, if the following conditions are met:

(i) The contract with the broker provides for payment that does not exceed the actual costs calculated as though the broker were a distinct unit, and excludes from these payments any personnel or other costs shared with or allocated from parent or related entities; and the governmental broker maintains an accounting system such that all funds allocated to the Medicaid brokerage program and all costs charged to the brokerage program will be completely separate from any other program;

(ii) The broker documents that, with respect to the individual’s specific transportation needs, the government provider is the most appropriate and lowest cost alternative; and

(iii) The broker documents that the Medicaid program is paying no more for fixed route public transportation than the rate charged to the general public and no more for public paratransit services than the rate charged to other State human services agencies for comparable services.

(C) Transportation providers may not offer or make any payment or other form of remuneration, including any kickback, rebate, cash, gifts, or service in kind to the broker in order to influence referrals or subcontracting for non-emergency medical transportation provided to a Medicaid recipient.

(D) In referring or subcontracting for non-emergency medical transportation with transportation providers, a broker may not withhold necessary non-emergency medical transportation from a Medicaid recipient or provide non-emergency medical transportation that is not the most appropriate and a cost-effective means of transportation for that recipient for the purpose of financial gain, or for any other purpose.

(b) *Services furnished in a religious nonmedical health care institution.* Services furnished in a religious nonmedical health care institution are services furnished in an institution that:

(1) Is an institution that is described in (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under section 501(a) of that section.

(2) Is lawfully operated under all applicable Federal, State, and local laws and regulations.

(3) Furnishes only nonmedical nursing items and services to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs.

(4) Furnishes nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of nonmedical patients.

(5) Furnishes these nonmedical items and services to inpatients on a 24-hour basis.

(6) Does not furnish, on the basis of its religious beliefs, through its personnel or otherwise, medical items and

services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients.

(7) Is not owned by, is not under common ownership with, or does not have an ownership interest of 5 percent or more in, a provider of medical treatment or services and is not affiliated with a provider of medical treatment or services or with an individual who has an ownership interest of 5 percent or more in a provider of medical treatment or services. Permissible affiliations are described in paragraph (c) of this section.

(8) Has in effect a utilization review plan that meets the following criteria:

(i) Provides for the review of admissions to the institution, duration of stays, cases of continuous extended duration, and items and services furnished by the institution.

(ii) Requires that the reviews be made by a committee of the institution that included the individuals responsible for overall administration and for supervision of nursing personnel at the institution.

(iii) Provides that records be maintained of the meetings, decisions, and actions of the utilization review committee.

(iv) Meets other requirements as CMS finds necessary to establish an effective utilization review plan.

(9) Provides information CMS may require to implement section 1821 of the Act, including information relating to quality of care and coverage determinations.

(10) Meets other requirements as CMS finds necessary in the interest of the health and safety of patients who receive services in the institution. These requirements are the conditions of participation found at part 403, subpart G of this chapter.

(c) *Affiliations.* An affiliation is permissible for purposes of paragraph (b)(7) of this section if it is between one of the following:

(1) An individual serving as an uncompensated director, trustee, officer, or other member of the governing body of an RNHCI and a provider of medical treatment or services.

(2) An individual who is a director, trustee, officer, employee, or staff

member of an RNHCI and an another individual, with whom he or she has a family relationship, who is affiliated with (or has an ownership interest in) a provider of medical treatment or services.

(3) The RNHCI and an individual or entity furnishing goods or services as a vendor to both providers of medical treatment or services and RNHCIs.

(d) *Skilled nursing facility services for individuals under age 21.* “Skilled nursing facility services for individuals under 21” means those services specified in § 440.40 that are provided to recipients under 21 years of age.

(e) *Emergency hospital services.* “Emergency hospital services” means services that—

(1) Are necessary to prevent the death or serious impairment of the health of a recipient; and

(2) Because of the threat to the life or health of the recipient necessitate the use of the most accessible hospital available that is equipped to furnish the services, even if the hospital does not currently meet—

(i) The conditions for participation under Medicare; or

(ii) The definitions of inpatient or outpatient hospital services under §§ 440.10 and 440.20.

(f) [Reserved]

(g) *Critical access hospital (CAH).* (1) CAH services means services that (i) are furnished by a provider that meet the requirements for participation in Medicare as a CAH (see subpart F of part 485 of this chapter), and (ii) are of a type that would be paid for by Medicare when furnished to a Medicare beneficiary.

(2) Inpatient CAH services do not include nursing facility services furnished by a CAH with a swing-bed approval.

[43 FR 45224, Sept. 29, 1978, as amended at 45 FR 24889, Apr. 11, 1980; 46 FR 48540, Oct. 1, 1981; 58 FR 30671, May 26, 1993; 62 FR 46037, Aug. 29, 1997; 64 FR 67051, Nov. 30, 1999; 72 FR 73651, Dec. 28, 2007; 73 FR 77530, Dec. 19, 2008; 74 FR 31196, June 30, 2009]

§ 440.180 Home or community-based services.

(a) *Description and requirements for services.* “Home or community-based services” means services, not otherwise