

practitioners” means any medical or remedial care or services, other than physicians’ services, provided by licensed practitioners within the scope of practice as defined under State law.

(b) Chiropractors’ services include only services that—

(1) Are provided by a chiropractor who is licensed by the State and meets standards issued by the Secretary under § 405.232(b) of this chapter; and

(2) Consists of treatment by means of manual manipulation of the spine that the chiropractor is legally authorized by the State to perform.

#### § 440.70 Home health services.

(a) “Home health services” means the services in paragraph (b) of this section that are provided to a beneficiary—

(1) At his place of residence, as specified in paragraph (c) of this section; and

(2) On orders written by a physician, nurse practitioner, clinical nurse specialist or physician assistant, working in accordance with State law, as part of a written plan of care that the ordering practitioner reviews every 60 days for services described in (b)(1), (2), and (4) of this section; and

(3) On his or her physician’s orders or orders written by a licensed practitioner of the healing arts acting within the scope of practice authorized under State law, as part of a written plan of care for services described in paragraph (b)(3) of this section. The plan of care must be reviewed by the ordering practitioner as specified in paragraph (b)(3)(iii) of this section.

(b) Home health services include the following services and items. Paragraphs (b)(1), (2) and (3) of this section are required services and items that must be covered according to the home health coverage parameters. Services in paragraph (b)(4) of this section are optional. Coverage of home health services cannot be contingent upon the beneficiary needing nursing or therapy services.

(1) Nursing service, as defined in the State Nurse Practice Act, that is provided on a part-time or intermittent basis by a home health agency as defined in paragraph (d) of this section,

or if there is no agency in the area, a registered nurse who—

(i) Is currently licensed to practice in the State;

(ii) Receives written orders from the patient’s practitioner as defined in (a)(2) of this section;

(iii) Documents the care and services provided; and

(iv) Has had orientation to acceptable clinical and administrative recordkeeping from a health department nurse.

(2) Home health aide service provided by a home health agency,

(3) Medical supplies, equipment, and appliances suitable for use in any setting in which normal life activities take place, as defined at § 440.70(c)(1).

(i) Supplies are health care related items that are consumable or disposable, or cannot withstand repeated use by more than one individual, that are required to address an individual medical disability, illness or injury.

(ii) Equipment and appliances are items that are primarily and customarily used to serve a medical purpose, generally are not useful to an individual in the absence of a disability, illness or injury, can withstand repeated use, and can be reusable or removable. State Medicaid coverage of equipment and appliances is not restricted to the items covered as durable medical equipment in the Medicare program.

(iii) A beneficiary’s need for medical supplies, equipment, and appliances must be reviewed by a physician or, as defined in § 400.200 of this chapter, an other licensed practitioner of the healing arts acting within the scope of practice authorized under State law, annually.

(iv) Frequency of further physician or, as defined in § 400.200 of this chapter, an other licensed practitioner review of a beneficiary’s continuing need for the items is determined on a case-by-case basis based on the nature of the item prescribed.

(v) States can have a list of preapproved medical equipment supplies and appliances for administrative ease but States are prohibited from having absolute exclusions of coverage on medical equipment, supplies, or appliances. States must have processes

and criteria for requesting medical equipment that is made available to individuals to request items not on the State's list. The procedure must use reasonable and specific criteria to assess items for coverage. When denying a request, a State must inform the beneficiary of the right to a fair hearing.

(4) Physical therapy, occupational therapy, or speech pathology and audiology services, provided by a home health agency or by a facility licensed by the State to provide medical rehabilitation services. (See § 441.15 of this subchapter.)

(c) A beneficiary's place of residence, for home health services, does not include a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities, except for home health services in an intermediate care facility for Individuals with Intellectual Disabilities that are not required to be provided by the facility under subpart I of part 483. For example, a registered nurse may provide short-term care for a beneficiary in an intermediate care facility for Individuals with Intellectual Disabilities during an acute illness to avoid the beneficiary's transfer to a nursing facility.

(1) Nothing in this section should be read to prohibit a beneficiary from receiving home health services in any setting in which normal life activities take place, other than a hospital, nursing facility; intermediate care facility for individuals with intellectual disabilities; or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Home health services cannot be limited to services furnished to beneficiaries who are homebound.

(2) Additional services or service hours may, at the State's option, be authorized to account for medical needs that arise in the settings home health services are provided.

(d) "Home health agency" means a public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare, including the capitalization requirements under § 489.28 of this chapter.

(e) A "facility licensed by the State to provide medical rehabilitation services" means a facility that—

(1) Provides therapy services for the primary purpose of assisting in the rehabilitation of disabled individuals through an integrated program of—

(i) Medical evaluation and services; and

(ii) Psychological, social, or vocational evaluation and services; and

(2) Is operated under competent medical supervision either—

(i) In connection with a hospital; or

(ii) As a facility in which all medical and related health services are prescribed by or under the direction of individuals licensed to practice medicine or surgery in the State.

(f) No payment may be made for services referenced in paragraphs (b)(1) through (4) of this section, unless a practitioner referenced in paragraph (a)(2) of this section or for medical equipment, a practitioner described in paragraph (a)(3) of this section documents that there was a face-to-face encounter with the beneficiary that meets the following requirements.

(1) For the initiation of home health services, the face-to-face encounter must be related to the primary reason the beneficiary requires home health services and must occur within the 90 days before or within the 30 days after the start of the services.

(2) For the initiation of medical equipment, the face-to-face encounter must be related to the primary reason the beneficiary requires medical equipment and must occur no more than 6 months prior to the start of services.

(3) The face-to-face encounter may be conducted by one of the following practitioners:

(i) A physician;

(ii) A nurse practitioner or clinical nurse specialist, as those terms are defined in section 1861(aa)(5) of the Act, in accordance with State law;

(iii) A certified nurse midwife, as defined in section 1861(gg) of the Act, as authorized by State law;

(iv) A physician assistant, as defined in section 1861(aa)(5) of the Act, in accordance with State law; or

(v) For beneficiaries admitted to home health immediately after an

acute or post-acute stay, the attending acute or post-acute physician.

(vi) For medical equipment, supplies, or appliances, a licensed practitioner of the healing arts acting within the scope of practice authorized under state law.

(4) If State law does not allow the non-physician practitioner, as described in paragraphs (f)(3)(ii) through (vi) of this section, to perform the face-to-face encounter independently, the non-physician practitioner must communicate the clinical findings of that face-to-face encounter to the ordering physician. Those clinical findings must be incorporated into a written or electronic document included in the beneficiary's medical record.

(5) To assure clinical correlation between the face-to-face encounter and the associated home health services, the practitioner responsible for ordering the services must:

(i) Document the face-to-face encounter which is related to the primary reason the patient requires home health services, occurred within the required timeframes prior to the start of home health services.

(ii) Must indicate the practitioner who conducted the encounter, and the date of the encounter.

(6) The face-to-face encounter may occur through telehealth, as implemented by the State.

(g)(1) No payment may be made for medical equipment, supplies, or appliances referenced in paragraph (b)(3) of this section to the extent that a face-to-face encounter requirement would apply as durable medical equipment (DME) under the Medicare program, unless a practitioner referenced in paragraph (a)(3) of this section documents a face-to-face encounter with the beneficiary consistent with the requirements of paragraph (f) of this section except as indicated in paragraph (g)(2) of this section.

(2) The face-to-face encounter may be performed by any of the practitioners described in paragraph (f)(3) of this section, with the exception of certified

nurse-midwives, as described in paragraph (f)(3)(iii) of this section.

[43 FR 45224, Sept. 29, 1978, as amended at 45 FR 24888, Apr. 11, 1980; 62 FR 47902, Sept. 11, 1997; 63 FR 310, Jan. 5, 1998; 81 FR 5566, Feb. 2, 2016; 85 FR 19291, Apr. 6, 2020; 85 FR 27626, May 8, 2020]

#### § 440.80 Private duty nursing services.

*Private duty nursing services* means nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided—

(a) By a registered nurse or a licensed practical nurse;

(b) Under the direction of the beneficiary's physician; and

(c) To a beneficiary in one or more of the following locations at the option of the State—

(1) His or her own home;

(2) A hospital; or

(3) A skilled nursing facility.

[52 FR 47934, Dec. 17, 1987]

#### § 440.90 Clinic services.

*Clinic services* means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. The term includes the following services furnished to outpatients:

(a) Services furnished at the clinic by or under the direction of a physician or dentist.

(b) Services furnished outside the clinic, by clinic personnel under the direction of a physician, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

[56 FR 8851, Mar. 1, 1991, as amended at 60 FR 61486, Nov. 30, 1995]

#### § 440.100 Dental services.

(a) “Dental services” means diagnostic, preventive, or corrective procedures provided by or under the supervision of a dentist in the practice of his profession, including treatment of—

(1) The teeth and associated structures of the oral cavity; and