

§410.77

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clinical nurse specialist in accordance with State law;

(2) Have a master's degree in a defined clinical area of nursing from an accredited educational institution or a Doctor of Nursing Practice (DNP) doctoral degree; and

(3) Be certified as a clinical nurse specialist by a national certifying body that has established standards for clinical nurse specialists and that is approved by the Secretary.

(c) *Services.* Medicare Part B covers clinical nurse specialists' services in all settings in both rural and urban areas only if the services would be covered if furnished by a physician and the clinical nurse specialist—

(1) Is legally authorized to perform them in the State in which they are performed;

(2) Is not performing services that are otherwise excluded from coverage by one of the statutory exclusions; and

(3) Performs them while working in collaboration with a physician.

(i) Collaboration is a process in which a clinical nurse specialist works with one or more physicians to deliver health care services within the scope of the practitioner's expertise, with medical direction and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as provided by the law of the State in which the services are performed.

(ii) In the absence of State law governing collaboration, collaboration is a process in which a clinical nurse specialist has a relationship with one or more physicians to deliver health care services. Such collaboration is to be evidenced by clinical nurse specialists documenting the clinical nurse specialists' scope of practice and indicating the relationships that they have with physicians to deal with issues outside their scope of practice. Clinical nurse specialists must document this collaborative process with physicians.

(iii) The collaborating physician does not need to be present with the clinical nurse specialist when the services are furnished, or to make an independent evaluation of each patient who is seen by the clinical nurse specialist.

(d) *Services and supplies furnished incident to clinical nurse specialists' services.* Medicare Part B covers services and

supplies incident to the services of a clinical nurse specialist if the requirements of §410.26 are met.

(e) *Professional services.* Clinical nurse specialists can be paid for professional services only when the services have been personally performed by them and no facility or other provider charges, or is paid, any amount for the furnishing of the professional services.

(1) Supervision of other nonphysician staff by clinical nurse specialists does not constitute personal performance of a professional service by clinical nurse specialists.

(2) The services are provided on an assignment-related basis, and a clinical nurse specialist may not charge a beneficiary for a service not payable under this provision. If a beneficiary has made payment for a service, the clinical nurse specialist must make the appropriate refund to the beneficiary.

(f) *Medical record documentation.* For clinical nurse specialists' services, the clinical nurse specialist may review and verify (sign and date), rather than re-document, notes in a patient's medical record made by physicians; residents; nurses; medical, physician assistant, and advanced practice registered nurse students; or other members of the medical team, including, as applicable, notes documenting the clinical nurse specialist's presence and participation in the service.

[63 FR 58908, Nov. 2, 1998, as amended at 67 FR 80040, Dec. 31, 2002; 73 FR 69934, Nov. 19, 2008; 78 FR 74811, Dec. 10, 2013; 84 FR 63191, Nov. 15, 2019]

§410.77 **Certified nurse-midwives' services: Qualifications and conditions.**

(a) *Qualifications.* For Medicare coverage of his or her services, a certified nurse-midwife must:

(1) Be a registered nurse who is legally authorized to practice as a nurse-midwife in the State where services are performed;

(2) Have successfully completed a program of study and clinical experience for nurse-midwives that is accredited by an accrediting body approved by the U.S. Department of Education; and

(3) Be certified as a nurse-midwife by the American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council.

(b) *Services.* A certified nurse-midwife's services are services furnished by a certified nurse-midwife and services and supplies furnished as an incident to the certified nurse-midwife's services that—

(1) Are within the scope of practice authorized by the law of the State in which they are furnished and would otherwise be covered if furnished by a physician or as an incident to a physician's service; and

(2) Unless required by State law, are provided without regard to whether the certified nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

(c) *Incident to services: Basic rule.* Medicare Part B covers services and supplies incident to the services of a certified nurse-midwife if the requirements of § 410.26 are met.

(d) *Professional services.* A nurse-midwife can be paid for professional services only when the services have been performed personally by the nurse-midwife.

(1) Supervision of other nonphysician staff by a nurse-midwife does not constitute personal performance of a professional service by the nurse-midwife.

(2) The service is provided on an assignment-related basis, and a nurse-midwife may not charge a beneficiary for a service not payable under this provision. If the beneficiary has made payment for a service, the nurse-midwife must make the appropriate refund to the beneficiary.

(3) A nurse-midwife may provide services that he or she is legally authorized to perform under State law as a nurse-midwife, if the services would otherwise be covered by the Medicare program when furnished by a physician or incident to a physicians' professional services.

(e) *Medical record documentation.* For certified nurse-midwives' services, the certified nurse-midwife may review and verify (sign and date), rather than re-document, notes in a patient's medical record made by physicians; residents; nurses; medical, physician assistant, and advanced practice registered nurse

students; or other members of the medical team, including, as applicable, notes documenting the certified nurse-midwife's presence and participation in the service.

[63 FR 58909, Nov. 2, 1998, as amended at 78 FR 74811, Dec. 10, 2013; 84 FR 63191, Nov. 15, 2019]

#### § 410.78 Telehealth services.

(a) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Asynchronous store and forward technologies* means the transmission of a patient's medical information from an originating site to the physician or practitioner at the distant site. The physician or practitioner at the distant site can review the medical case without the patient being present. An asynchronous telecommunications system in single media format does not include telephone calls, images transmitted via facsimile machines and text messages without visualization of the patient (electronic mail). Photographs visualized by a telecommunications system must be specific to the patient's medical condition and adequate for furnishing or confirming a diagnosis and or treatment plan. Dermatological photographs, for example, a photograph of a skin lesion, may be considered to meet the requirement of a single media format under this provision.

(2) *Distant site* means the site at which the physician or practitioner delivering the service is located at the time the service is provided via a telecommunications system.

(3) *Interactive telecommunications system* means multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. Telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system.

(i) *Exception.* For the duration of the Public Health Emergency as defined in § 400.200 of this chapter, *Interactive telecommunications system* means multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way,