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**On Behalf Of** Justice In Aging  
**Sent:** Friday, January 29, 2016 1:08 PM  
**To:** clarkeross10@comcast.net  
**Subject:** New Rule Prohibits "Homebound" Requirement for Medicaid Home Health Services

**JUSTICE IN AGING**  
FIGHTING SENIOR POVERTY THROUGH LAW

Health Network Alert

## **Good News: CMS Issues Final Rule Prohibiting “Homebound” Requirement for Medicaid Home Health Services**

On February 2, 2016, the Centers for Medicare and Medicaid Services (CMS) will issue a final rule codifying the homebound prohibition for Medicaid home health services, and clarifying the settings where homebound services may be provided. The [final rule](#) revises [Medicaid home health regulations](#) (42 C.F.R. § 440.70(c)(1-2)) to make clear that a Medicaid beneficiary does *not* need to be “homebound” in order to receive home health services. In addition, CMS explains that home health services may be provided in any setting where normal life activities take place, and are not limited to a hospital, nursing facility, or other institution.

In its commentary, the agency explains that the prohibition codifies longstanding agency policy, previously articulated [in a 2000 letter to state Medicaid directors](#), that a Medicaid homebound requirement for home health services violates the Americans with Disabilities Act (ADA), as articulated in *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Unfortunately, the final rule is limited to Medicaid’s homebound requirement, and does not change the Medicare homebound requirement. The agency cites what it describes as an inherent difference between the Medicaid statute and Section 1814(a) and 1835(a) of the Social Security Act, which imposes a Medicare homebound requirement. Acknowledging the challenge that this Medicaid v. Medicare misalignment places on [dual eligible individuals](#), the agency notes in the [rule commentary](#): “we would permit states the flexibility to authorize additional hours of home health services to account for medical needs that may arise out of the home.” (pg. 56)

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The clarification that Medicaid home health services should not be limited to services furnished in the home reflects principles set forth in two prior court cases, *Skubel v. Fuoroli*, 113 F. 3d 330 (2d. Cir. 1997) (finding a state could not limit coverage of home health services to those in an individual residence); and *Detsel v. Sullivan*, 895 F. 2d 58 (2d Circ. 1990) (invalidating a regulation that limited private duty nursing services to an individual's residence).

Aging and disability advocates welcomed the final regulation's codification of agency policy, which comes after [over a decade of advocacy](#) for more community-based options for long-term services and supports.

The rule's other provisions include:

- Prohibiting absolute exclusions on medical supplies, equipment or appliances;
- Requiring states to provide and make available to individuals a reasonable and meaningful procedure for individuals to request items not on a preapproved list; and
- Greater alignment of the definitions of home health medical supplies, equipment and appliances with the Medicare definition of DME.

**The rule will take effect July 1, 2016.** CMS will delay enforcement until a state's legislature has had an opportunity to implement necessary changes (either one or two years, based on the state's legislative cycle).

*For more on Justice in Aging's community integration and Olmstead advocacy, read about our litigation to help [35,000 low-income seniors and people with disabilities](#) stay healthy at home and in their communities, as well as our [advocacy work](#) to help low-income seniors age in place.*

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