

## **CMS-10111 Form Instructions**

### **For HHAs' Completion of the Notice of Exclusions from Medicare Benefits-Home Health Agency (CMS-10111).**

Upon final OMB approval of the Notice of Exclusions from Medicare Benefits-Home Health Agency (NEMB-HHA), these instructions will be formally published in the Internet Only Manual Pub. 100-4 Medicare Claims Processing Manual, Section 30, Financial Liability Protections.

### **60.7 – Notice of Exclusions from Medicare Benefits- Home Health Agency (NEMB-HHA, form CMS-10111).**

**(Rev. x, xx-xx-04)**

The NEMB-HHA Form CMS-10111 is available online in English and Spanish at the CMS Beneficiary Notices Initiative (BNI) Web page at <http://www.cms.hhs.gov/medicare/bni/>, under “Notice of Exclusions from Medicare Benefits – Home Health Agency (NEMB-HHA, Form CMS-10011). For the online replicable copies of Form CMS-10111 forms in PDF format, go directly to:

English CMS-10111 [http://cms.hhs.gov/medicare/bni/XXXXXXXXX\\_English.pdf](http://cms.hhs.gov/medicare/bni/XXXXXXXXX_English.pdf)

Spanish CMS-10111 [http://cms.hhs.gov/medicare/bni/XXXXXXXXX\\_Spanish.pdf](http://cms.hhs.gov/medicare/bni/XXXXXXXXX_Spanish.pdf)

#### **60.7.1. – Using the NEMB-HHA (CMS-10111)**

**(Rev. x, xx-xx-04)**

Home health agencies must prepare and deliver to the beneficiary, or authorized representative, an NEMB-HHA whenever they reduce or terminate home health services, regardless of whether the reason for that change is a Medicare coverage determination, lack of physician certification, or the HHA's unwillingness to provide services for business reasons unrelated to coverage. For all expected denials of Medicare payments for home health care items and services for which an HHABN (CMS-R-296) or ABN (CMS-R-131) is not used because neither LOL nor RR applies, home health agencies must use the Notice of Exclusions from Medicare Benefits - Home Health Agency (NEMB-HHA) Form CMS-10111 to advise beneficiaries, before items or services that are not Medicare benefits are furnished, that Medicare will not pay for them. NEMB-HHAs allow beneficiaries to make informed consumer decisions about receiving home health care items or services for which they must pay out-of-pocket and to be more active participants in their own health care treatment decisions. The NEMB-HHA is used, on a mandatory basis, by HHAs to advise their Medicare patients of the services that Medicare never covers, for which it is not appropriate to use ABNs.

#### **60.7.2 - Using NEMB-HHAs With Categorical Denials**

**(Rev. x, xx-xx-04)**

Home health agencies must prepare and deliver to the beneficiary, or authorized representative, an NEMB-HHA when it is known that Medicare will not pay for, or will not continue to pay for, items or services on the basis of any categorical exclusion listed in the second box on the form. In this case, insert a mark in the pertinent check-off box. A NEMB-HHA **IS NOT** used for either of the following two categorical exclusions that trigger statutory protections:

- The service may be denied as “not reasonable and necessary” (“medical necessity”) - §1862(a)(1) of the Act; or
- The service may be denied as “custodial care” - §1862(a)(9) of the Act.

**60.7.3 - Using NEMB-HHAs With Technical Denials****(Rev. x, xx-xx-04)**

Home health agencies must prepare and deliver to the beneficiary, or authorized representative, an NEMB-HHA when it is known that Medicare will not pay for, or will not continue to pay for, items or services on the basis of any technical statutory exclusion, that is, for any failure to meet completely the statutory definition of a Medicare benefit. In this case, insert a mark in the pertinent check-off box in the second box on the form, or if the exclusion is not pre-printed, insert a mark in the check-off box for “Other:” and write the exclusion in the space provided after “Other:” An NEMB-HHA **IS NOT** used for any of the following six technical exclusions that trigger statutory protections:

- The home health care patient does not need intermittent skilled nursing care - §1814(a)(2)(C) [Part A] or §1835(a)(2)(A) [Part B] of the Act;
- The home health care patient is not confined to the home - §1814(a)(2)(C) [Part A] or §1835(a)(2)(A) [Part B] of the Act;
- The patient in hospice is found not to be terminally ill – §1861(dd)(3)(A) of the Act;
- The patient received a prohibited telephone solicitation (“cold call”) in the case of medical equipment & supplies - §1834(a)(17)FIRST(B) of the Act;
- The supplier does not have a supplier number, in the case of medical equipment & supplies denials - §1834(j)(1) of the Act; or
- The supplier has not obtained a required advance coverage determination in the case of medical equipment & supplies denials – §1834(a)(15) of the Act.

## **60.8 - OMB Burden Notice for the NEMB-HHA (CMS-10111)**

**(Rev. X, XX-XX-XX)**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-XXXX. The time required to complete this information collection is estimated to average six minutes per response, including the time to review instructions, search existing data resources, and gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:

Centers for Medicare & Medicaid Services  
Attn: Reports Clearance Officer  
C5-14-03  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850.

## **60.9 - Form Instructions for the NEMB-HHA (CMS-10111)**

**(Rev. x, xx-xx-04)**

### **60.9.1 - General Rules for NEMB-HHA**

**(Rev. x, xx-xx-04)**

**60.9.1.1** – When appropriate for use, the use of the Notice of Exclusions from Medicare Benefits-Home Health Agency (NEMB-HHA) is mandatory.

**60.9.1.2** - You (the home health agency) must ensure that the readability of the NEMB-HHA facilitates patient understanding. The standard form text must be in at least 12-point font. No insertion into the blanks, boxes, or customizable area (the header) of the NEMB-HHA, if typed or printed, should use italics or any font that is difficult to read; an Arial or Arial Narrow font, or a similarly readable font, in the font size range of 10 point to 12 point, is recommended for insertions. Black or dark blue ink on a white background is strongly recommended. A visually high-contrast combination of dark ink on a pale background is required. Low-contrast combinations and block shading are prohibited. If insertions are handwritten, they must be legible. In all cases, both the original and copies of NEMB-HHA must be legible and high-contrast. When Spanish language NEMB-HHAs are used, you should make insertions on the form in Spanish to the best of your ability; where that is impossible, you need to take other steps as necessary to ensure that the patient understands the notice.

### **60.9.2 - Header of NEMB-HHA**

**(Rev. x, xx-xx-04)**

**60.9.2.1** - The header of the NEMB-HHA, above the title, is a customizable area of the CMS-10111, which you may customize for your use, consistent with the requirements of §60.9.2.2.

**60.9.2.2** - The following required elements must be included in the header. Within these general rules, you may customize the header. The NEMB-HHA header must include your identifying information, including your name, address and telephone number and your TTY/TDD number or directions for using your other telecommunication system for individuals with impaired speech or hearing. You may elect to include your logo (if any).

### **60.9.3 - Body of NEMB-HHA**

**(Rev. x, xx-xx-04)**

**60.9.3.1** - On the line, “Date of Notice: \_\_\_\_\_”, you are required to enter the date on which you gave the notice personally to the patient or authorized representative. Where personal delivery is not possible, include both the date you notified the patient by telephone and the date you mailed the notice.

**60.9.3.2** - Insert in the space provided in the first box on the form following “Medicare will not pay for:” the description of the items or services about which notice is being given. Avoid using abbreviations on the NEMB-HHA.

**60.9.3.3** - When you give an NEMB because you know Medicare will not pay for, or will not continue to pay for, items or services on the basis of any categorical statutory exclusion listed in the second box on the form, insert a mark in the pertinent check-off box to the left of the specific exclusion. When you expect that Medicare will not pay for, or will not continue to pay for, items or services on the basis of any technical statutory exclusion, that is, for any failure to meet completely the statutory definition of a Medicare benefit, insert a mark in the pertinent check-off box to the left of the specific exclusion in the second box on the form, or if the exclusion is not pre-printed, insert a mark in the check-off box for “Other:” and write the exclusion in the space provided after “Other:”. If you wish to also circle a preprinted exclusion, or otherwise highlight it, that is permissible.

**60.9.3.4** - On the line, “Ask us ... will cost you (Estimated Cost: \$\_\_\_\_\_ )”, you are required to enter the estimated cost of the services. You are not required to express the cost estimate in any specific format. You must respond timely, accurately, and completely to a patient, or authorized representative, who requests information about the extent of the patient’s personal financial liability for home health care for which you expect that Medicare may not, or may no longer, pay. You must respond to the patient’s request for a cost estimate in terms which the patient can understand.

### **60.9.4 - Option Boxes for NEMB-HHA**

**(Rev. x, xx-xx-04)**

**60.9.4.1** - Do NOT pre-select any option.

**60.9.4.2** - The patient must select one option.

**A.** If the patient or authorized representative selects Option 1, the patient wants to receive the items or services. The patient agrees to be “personally and fully responsible for payment”, “either out of pocket or through any other insurance”.

**B.** If the patient or authorized representative selects Option 2, the patient has elected not to receive the subject home health services.

## **60.9.5 - Signature Requirements for NEMB-HHA**

**(Rev. x, xx-xx-04)**

**60.9.5.1** - Patient’s Name - Enter the name of the patient (do not substitute the name of an authorized representative).

**60.9.5.2** - Medicare # (HICN) - Enter the patient’s health insurance claim number. A NEMB-HHA could be invalidated for the lack of a Medicare HICN if the patient-recipient of the NEMB-HHA alleges that the form was signed by someone else of the same name and the RHHI cannot resolve the matter with certainty.

**60.9.5.3** - On the “Signature of patient...” line, the patient, or authorized representative, must sign his or her name. (See §40.3.5 for definition of “Authorized Representative.”)

**60.9.5.4** - On the “Date” line, the patient, or authorized representative, enters the date on which he or she signed the NEMB-HHA.

## **60.9.6 – Dealing with Beneficiary’s Refusal to Sign a NEMB-HHA**

**(Rev. x, xx-xx-04)**

A beneficiary (or authorized representative) who has been given a NEMB-HHA may decide to receive the item or service. In this case, the beneficiary should indicate that they are willing to be personally and fully responsible for payment. When a beneficiary decides to decline an item or service, he/she should so indicate. The beneficiary cannot properly refuse to sign the NEMB-HHA at all and still demand the item or service. Since neither LOL nor RR financial liability protections apply in the situations for which NEMB-HHAs are given, the NEMB-HHA is not determinative of financial liability. If a beneficiary refuses to sign a properly executed NEMB-HHA, the HHA may consider not furnishing the item or service unless the consequences (health and safety of the patient, or civil liability in case of harm) are such that this is not an option. Additionally, the HHA may elect to annotate the NEMB-HHA, and have the annotation witnessed, indicating the circumstances and persons involved. If the beneficiary demands the service and refuses to sign, the HHA may have a second person witness the provision of the NEMB-HHA and the beneficiary’s refusal to sign. They may both sign an annotation on the NEMB-HHA

attesting to having witnessed said provision and refusal. Where there is only one person on site (e.g., in a home visit), the second witness may be contacted by telephone to witness the beneficiary's refusal to sign the NEMB-HHA by telephone and may sign the annotation at a later time. An unused patient signature line on the NEMB-HHA form may be used for such an annotation; writing in the margins of the form is also permissible. Because neither LOL nor RR financial liability protections apply in the situations for which NEMB-HHAs are given, the beneficiary will be held liable and the HHA will be able to collect from the beneficiary, in case of a denial.

## **60.10 – Submitting a Claim when a NEMB-HHA Is Given**

**(Rev. x, xx-xx-04)**

For the kinds of excluded services for which NEMB-HHAs are given, it may not be the usual practice of the HHA to submit claims to Medicare. Nevertheless, a beneficiary may demand claim submission in order to access his or her appeal rights. In any case, a beneficiary who does receive an item or service always has the right to a Medicare determination and the claim must be filed with Medicare if the beneficiary or authorized representative specifically requests that the HHA submit a claim.