

FMLA Does Not Need to Be a Four-Letter Word



These tips can help you complete FMLA paperwork quickly and accurately.

What is your reaction to the message that you have Family and Medical Leave Act (FMLA) paperwork on your desk? Did your day just get longer? Will your lunch break be shorter? Is your time between visits going to be filled with back and forth messages to gather all the information you need to complete the form? How is your mood? Did your staff apologize as they placed the paperwork on your desk? Maybe they just hid the form under your other faxes and tiptoed away quietly.

Although you may not be able to avoid FMLA forms entirely, you do not need to dread them. By familiarizing yourself with the questions asked and the purpose of the form, keeping your answers quick and concise, getting assistance from your office staff, obtaining patient input to ensure forms are completed correctly the first

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time, and keeping copies for future reference in the patient's record, the form completion and renewal process can be a breeze.

HOW THE FMLA WORKS AND WHAT IT COVERS

For some patients, the FMLA form is as important as direct patient care. The FMLA allows eligible employees to take unpaid leave for family and medical reasons (see "Qualifying reasons for leave under the FMLA" on page 14). During leave, their job is protected and health insurance coverage is continued.^{1,2}

Employees must notify their employer that they plan to take FMLA leave according to established procedures within their place of work. The employer is required to notify employees whether they are eligible for leave within five business days of the request for leave. Not all employed persons are eligible for FMLA, depending on the size of the company and length of employment.³

The employer may require medical certification for pregnancy or serious health conditions.⁴ That medical certification is the FMLA form.

OVERVIEW OF THE FMLA FORMS

FMLA forms issued by the U.S. Department of Labor Wage and Hour Division are titled "Certification of Health Care Provider for Employee's [or Family Member's] Serious Health Condition under the Family and Medical Leave Act." You may also notice the name of an agency on the form that is not the employer's company name, but rather the entity managing the leave paperwork and determination for the employer, as well as short- or long-term disability.

FMLA form questions are fairly standardized, but in 2020 the Department of Labor revised the forms in an attempt to simplify them. Employers and employees are permitted to use any version of the forms, so you may see either the older version or the newer version come across your desk. Read each question carefully when completing the form. Subtle changes in wording or differences in formatting of the forms can cause a physician who is trying to work quickly to answer incorrectly.

The first two sections of the FMLA form are generally for the employer and employee to complete. The third section is

for the physician or other health care provider to complete, and it is usually divided into two parts.

PART A: MEDICAL FACTS OR INFORMATION

Historically, Part A has had eight to 10 one- or two-part questions about the medical condition and treatment; however, the 2020 version of the form simplified this section.

Many of the questions on the forms are easy to answer, such as "Approximate date the condition commenced," which simply requires a month, day, and/or year. But other questions can be confusing, so here are some tips:

"What is the probable duration of the condition?" Provide your best estimate of the number of days, months, or years (or a range of time) for how long the condition lasted or will last. "Lifelong" is accepted by some employers, but "indefinite" or "unknown" are not acceptable answers.

"Was the patient admitted for an overnight stay in a hospital, hospice, or residential care facility?" If "yes," provide admission and discharge dates, such as 7/1-7/15/2020.

"Will the patient need to have treatment visits at least twice per year due to the condition?" If "yes," list the dates of the visits with you or with other providers, if known (e.g., Dr. Smith 1/5/2021).

"Was medication other than over-the-counter medication prescribed?" Simply answer "yes" or "no." You do not need to list medication names.

"Was the patient referred to other health care providers for evaluation and treatment? If so, state the nature of such treatments and expected duration of treatment." If "yes," simply state

KEY POINTS

- The Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid leave for family and medical reasons.
- To qualify for leave, patients are required to provide their employer with a certification form from their physician or other health care provider.
- To help you complete FMLA forms quickly and accurately, familiarize yourself with the questions, keep answers concise, involve your staff, and obtain patient input.

QUALIFYING REASONS FOR LEAVE UNDER THE FMLA

Twelve weeks of leave in a 12-month period for:

- The birth of a child and care of the child within one year of birth,
- Adoption or foster care placement and care of the child within one year of adoption or placement,
- Care for a spouse, child, or parent who has a serious health condition,
- The employee's own serious health condition that makes the employee unable to perform the essential functions of their job,
- A qualifying exigency while the employee's spouse, child, or parent is on covered active duty for the military.

Twenty-six weeks of leave during a 12-month period for:

- Care for a spouse, child, parent, or next of kin who is a covered service member with a serious injury or illness.

Definitions:

A serious health condition is an illness, injury, impairment, physical condition, or mental condition that requires or results in incapacity.

An incapacity is an inability to work, attend school, or perform regular activities of daily living because of a serious health condition, including treatment and recovery time.

Examples of incapacity:

Overnight hospitalization including the period of incapacity or subsequent treatment related to the overnight care:

- Admission for orthopedic surgery and time for inpatient or outpatient rehabilitation or physical therapy,
- Admission for myocardial infarction and time for rehabilitation,
- Admission for pneumonia and time for recovery and follow-up care.

Continuing treatment for a chronic condition over an extended period of time that may cause episodic incapacity:

- Asthma with episodic exacerbations,
- Diabetes with episodes of symptomatic hypoglycemia or hyperglycemia,
- Chronic back pain with episodes of exacerbation of symptoms.

Incapacity for more than three consecutive days not requiring hospitalization:

- Orthopedic injury temporarily limiting functional capacity,
- Infection, such as gastroenteritis, temporarily limiting functional capacity or need for resolution of symptoms for public health reasons before returning to work,
- Acute labyrinthitis limiting functional capacity or posing a safety risk to the employee.

"Cardiologist for ongoing care," "Physical therapist for 6-8 weeks of physical therapy," "Psychologist for weekly counseling," etc.

"Is the employee UNABLE to perform any of his/her job functions due to the condition? If so, identify the functions the employee is unable to perform." I typically answer "no" to indicate the patient is capable of performing the job functions at baseline. It is too cumbersome to parse out individual job functions affected by the condition. If the individual is not able to complete the job functions, the employer and employee may want to consider whether the condition is covered under the Americans with Disabilities Act, short-term disability, or long-term disability. FMLA time is routinely used before an employee applies for short- or long-term disability leave. If I answer "yes" to this question, I am indicating that the employee was or will be incapacitated and unable to perform any of the job duties for a defined period of time or episodically.

"Describe the relevant facts, if any, related to the condition for which the employee seeks leave." The FMLA form usually allows adequate space to explain the medical condition, including symptoms, diagnosis, ongoing treatment, or use of specialized equipment. You can be concise in your explanation of the condition (e.g., "Headaches interfering with concentration," "Hip fracture requiring surgery," or "Depression requiring therapy") or, if needed, provide more detail as to how the medical condition affects the employee's ability to perform job duties. If the employer requires more information, additional language can be added, as in the following examples:

- "The patient has a diagnosis of asthma, which results in episodic exacerbations affecting the ability to breathe,"
- "The patient has severe osteoarthritis of the knee and will require surgery and physical therapy over an extended period of time,"
- "The patient has depression being treated with medication and cognitive behavioral therapy,"
- "The patient has a diagnosis of migraine headaches. During a severe migraine headache, the patient is unable to concentrate or safely complete job duties."

PART B: AMOUNT OF LEAVE NEEDED

Part B of the provider section of the form asks a series of questions to quantify the amount of leave needed. Leave blank any questions that do not apply. Again, the questions are slightly different depending on the version of the form, but many of the questions are easy to answer with a simple “yes” or “no,” or by providing dates.

Here are some tips for potentially confusing questions:

“Will the employee be incapacitated for a single continuous period of time due to his/her medical condition? If so, estimate the beginning and end dates for the period of incapacity.” For hospitalization or surgery, specify the beginning and end dates. Answering “uncertain amount of time” or “6 to 8 weeks” is usually not acceptable, and the form will be returned to you for revision. Determine specific dates in consultation with the patient. You can make modifications or add extensions at a later time if the duration exceeds the predetermined amount of time. For example, if a patient asks for eight weeks of FMLA leave to get help for depression, that may very well be the appropriate amount of time to start a medication and find a mental health provider or participate in an intensive outpatient program.

“Estimate the treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment including recovery period.” Best practice is to ask for the patient’s input regarding the scheduled office visits, treatments, or tests. For example, you may see a patient four times per year for visits related to diabetes, but the condition may also necessitate other appointments during that year, such as with a podiatrist, ophthalmologist, or nutritionist. Therefore, the actual number of visits needed may be eight to 10 visits per year rather than four.

The time required for each visit should also be determined with patient input. While most office visits last 20 to 40 minutes, travel and wait time should be considered. I typically answer, “four hours per visit including travel and wait time.” Longer durations may be needed for certain tests, procedures, chemotherapy, or dialysis.

“Based on the patient’s medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity.” This addresses the time needed for absences due to episodic “flare-ups” of the medical condition. The patient’s input is also important for this section of the form. Review the patient’s history of symptoms over the preceding six to 12 months and estimate reasonable frequency and dura-

You can be concise in your explanation of the condition (e.g., “Headaches interfering with concentration”).

tion. Ask how many absences the patient had in the past year, or how often the patient anticipates exacerbations of the condition. Between your estimation and the patient’s estimation, a consensus can be achieved as to the number of hours or days per episode and the number of episodes per week or month. A range of numbers is acceptable.

A dilemma arises if the patient states that episodes occur, say, five times per month for five days per episode — 25 days of the month. In these instances, the physician and patient should reassess what truly is reasonable. If a patient’s medical condition changes, FMLA forms can be revised and resubmitted with addenda.

FAQS

Here are some common questions about the FMLA form completion process.

Will a patient ever need more than one form? Yes. Most employers require separate forms for separate medical conditions. A patient may present one form for diabetes and another form for migraine headaches. A separate form would also be needed if the patient needs FMLA time to care for a family member.

Can I complete the form during an office visit? Yes. Requiring an office visit for first-time completion of an FMLA form allows you to review each question with the patient and make decisions together regarding the amount of leave needed. Otherwise, you

may spend several minutes to several hours messaging back and forth with a patient to determine answers to multiple questions.

Form completion may occur during part of a regularly scheduled visit, if time allows, or during a separate visit for the paperwork. You can bill for the visit with the reason for the visit being the diagnosis for which FMLA leave is being requested. The billing code can be based on either time or complexity of the medical decision making.

How do I handle renewals? After completion of the initial form, add it to the patient's medical record so you have easy access to it during renewals. For renewals with no changes requested by the patient, office staff can assist by transcribing answers from the prior form onto the new form. The form can then be forwarded to the physician or other provider for review and signature.

FORMS WITH A PURPOSE

Unlike many forms you're likely asked to fill out, FMLA forms have a purpose, and physicians play an important role in the

medical certification process. It helps prevent employees from losing their jobs if they are out of work for a medical reason or to care for an ill family member. The certification also gives patients needed time off for doctor appointments, therapy sessions, and coping with episodic exacerbations of medical conditions. **FPM**

1. History of the FMLA. National Partnership for Women & Families. Accessed May 28, 2021. <https://www.nationalpartnership.org/our-work/economic-justice/history-of-the-fmla.html>

2. Family and Medical Leave Act (FMLA). U.S. Department of Labor. Accessed May 28, 2021. <https://www.dol.gov/general/topic/benefits-leave/fmla>

3. Mayer G. The Family and Medical Leave Act: an overview. Congressional Research Service. Sept. 28, 2012. Accessed May 28, 2021. <https://fas.org/sgp/crs/misc/R42758.pdf>

4. FMLA – serious health condition. Office of Human Resources Management. Accessed May 28, 2021. <https://www.commerce.gov/hr/employees/leave/fmla/serious-health-condition>

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