



September 2, 2014

The Honorable Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
Department of Health & Human Services
P.O. Box 8010
Baltimore, MD 21244-8010

RE: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Physician-Owned Hospitals: Data Sources for Expansion Exception; Physician Certification of Inpatient Hospital Services; Medicare Advantage Organizations and Part D Sponsors: Appeals Process for Overpayments Associated with Submitted Data (CMS-1613-P)

The American Academy of Physician Assistants (AAPA), on behalf of the more than 100,000 physician assistants (PAs) throughout the United States, appreciates the opportunity to provide comments on the Centers for Medicare and Medicaid Services (CMS) proposed 2015 Hospital Outpatient Prospective Payment System rule as published in the July 2, 2014, *Federal Register*.

AAPA supports the CMS proposal to remove the physician certification requirement for non-psychiatric inpatient hospital stays of fewer than 20 days. We applaud the agency for recognizing the unnecessary administrative burden the physician certification places on hospitals, PAs and physicians. Removal of the physician certification requirement will provide Medicare beneficiaries with improved access to quality, cost-effective care.

Physician Certification of Inpatient Hospital Services

A PA's education, experience and expertise in a collaborative model of team care with physicians make them uniquely qualified to perform the medical responsibilities of a hospital inpatient admission. As authorized by state law, hospital bylaws and the facility's credentialing and privileging policies, PAs routinely perform the admission history and physical (H+P), document the medical necessity, and write the order for inpatient admissions.

PAs are authorized to manage a Medicare beneficiary's entire episode of medical care, including diagnosing and treating the patient's condition, and prescribing medications, if necessary. Requiring a PA, who is a Medicare authorized ordering professional, to obtain a physician certification for an inpatient hospital admission is not supported by provisions in the Social Security Act. In fact, Section 1841(a)(3) of the Social Security Act does not require a physician certification as a condition of payment for inpatient hospital services. Quite simply, a physician certification requirement creates an administrative burden to timely patient management and does not lead to improved patient outcomes. The CMS proposal to eliminate the physician certification requirement will remove a significant barrier to efficient patient care in our nation's hospitals.

Medicare Inpatient Admission Orders Statutory and Regulatory Requirements

Congress explicitly delegated to CMS the authority to promulgate hospital inpatient admission requirements.¹ In September 2013 and January 2014, CMS issued Hospital Inpatient Admission Order and Certification (“Guidance”) requirements.² The Guidance provides the Medicare reimbursement requirements for admitting Medicare patients for hospital inpatient stays.

The current CMS admission certification requirements include an authentication of the practitioner’s order, which may be met by a signature or countersignature on inpatient admission orders by a physician.³ The physician certification includes other significant requirements. However, this proposed regulation removes the physician certification requirement for non-psychiatric hospital inpatient admission stays of fewer than 20 days.⁴ By removing the physician certification requirement, a Medicare beneficiary is considered a hospital inpatient if practitioners comply with the CMS inpatient order requirements.⁵

CMS Guidance and regulations require that an ordering/admitting practitioner order the inpatient admission.⁶ The Guidance defines ordering/admitting practitioner broadly to include physicians, primary care practitioners, and other healthcare practitioners who are: (1) authorized by the state to admit inpatients to hospitals; (2) granted privileges by the hospital to admit patients; and (3) knowledgeable about a patient’s care.⁷ The ordering practitioner makes the determination of medical necessity, and may write and sign the order to reflect that he or she made the decision to admit the patient.⁸

a. PAs are Ordering Practitioners

CMS Medicare regulations consistently define PAs as ordering practitioners. On March 19, 2010, CMS published a Medicare Program Integrity Transmittal which lists PAs as ordering/referring providers authorized

¹ Social Security Act § 1871 (“The Secretary may prescribe such regulations as may be necessary to carry out the administration of the insurance program.”); *See also* Social Security Act § 1814(A)(3) (Such *certification* shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations)

² Centers for Medicare and Medicaid Services, *Hospital Inpatient Admission Order and Certification*, 1 (Jan. 30, 2014), available at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Downloads/IP-Certification-and-Order-01-30-14.pdf>.

³ *Id.* at 1 (“The requirement to authenticate the practitioner order may be met by the signature or countersignature of the inpatient admission order by the certifying physician.”)

⁴ CMS, *2015 Hospital Outpatient Prospective Payment: CMS-1613-P*, 571-78 (2014) (“We are proposing to change our interpretation of section 1814(a)(3) of the Act to require a physician certification only for long-stay cases...”)

⁵ *Supra* n. 3, at 4 (“A beneficiary is considered an inpatient if they are formally admitted as such pursuant to an order for inpatient admission by a physician or other practitioner.”)

⁶ *Id.* (“The order must be furnished by a physician or other practitioner (ordering practitioner)”) *See also* 78 FR 50938-54 (“We stated that a beneficiary becomes a hospital inpatient when admitted as such after a physician (or other qualified practitioner as provided in the regulations) orders inpatient admission in accordance with the COPs, and that Medicare pays under Part A for such an admission if the order is documented in the medical record... However, the order serves the unique purpose of initiating the inpatient admission and documenting the physician’s (or other qualified practitioner as provided in the regulations) intent to admit the patient, which impacts its required timing.”)

⁷ *Id.* at 5 (“Medicare considers only the following practitioners to have sufficient knowledge to serve as the ordering practitioner: the admitting physician of record or a physician on call...the beneficiary’s primary care practitioner, clinical practitioner caring for the beneficiary at the point inpatient admission, or other practitioners qualified to admit inpatient and actively treating the beneficiary...”)

⁸ *Id.* at 4 (“The ordering practitioner makes the determination of medical necessity for inpatient care and renders the admission decision. The ordering practitioner is not required to write the order, but may sign the order reflecting he or she made the decision to admit the patient for inpatient services.”)

to order items and services for Medicare beneficiaries.⁹ In 2013, CMS published a Medicare enrollment guideline which listed PAs as ordering and referring providers.¹⁰

In the Affordable Care Act (ACA), Congress codified PAs as one of three primary care practitioners.¹¹ In 2011, CMS followed ACA mandates by implementing the Medicare Incentive Payments for Primary Care Services program.¹² The program offers primary care practitioners incentive payments for providing primary care services to Medicare beneficiaries. The program's regulations include PAs in the definition of primary care practitioners and details PA reimbursement for numerous ordering and referring services.¹³

b. Authority to Perform Admission H+P for Medicare Hospital Inpatient Admissions

The Medicare Conditions of Participation and Interpretive Guidelines, and the Joint Commission Standards address a PA's ability to perform the H+P and the physician's authority to delegate the H+P to a PA.¹⁴ The policies require that, in order for a PA to perform an H+P, authority be within the PA's state law scope of practice and be authorized by the hospital's bylaws.¹⁵

c. State Law Requirement for Inpatient Admission Orders

The proposed rule requires that, to furnish the order, the ordering practitioner must be licensed by the state to admit inpatients to hospitals.¹⁶ Because most state laws are broadly written, allowing PAs to perform those duties and services that are within the PA's education and expertise and authorized by the supervising physician, most PA practice acts, with limited exceptions, do not specify a list of medical tasks, duties and services PAs may perform. This broad language found in the state laws has led to some confusion as to whether PAs are precluded from providing the order unless the law specifically states "licensed to admit patients to hospitals." AAPA believes that CMS, when it attempted to clarify the admissions process as part of the 2-Midnight Rule, did not intend to disrupt work flow or impose additional administrative burdens on health professionals or hospitals. To clarify the CMS position AAPA requests:

⁹ Centers For Medicare and Medicaid, PUB 100-08 Medicare Program Integrity Trans. 386, 1 (2011), available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R386PI.pdf>

¹⁰ Centers For Medicare and Medicaid, MLN Medicare Enrollment Guidelines for Ordering/Referring Providers, 5 (2013), available at http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network/MLN/MLNProducts/downloads/MedEnroll_OrderReferProv_FactSheet_ICN906223.pdf.

¹¹ Patient Protection and Affordable Care Act § 5501(a) (2010)

¹² Centers For Medicare and Medicaid, PUB 100-04 Medicare Claims Processing Trans. 2161, 1 (2011), available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R2161CP.pdf>.

¹³ *Id.*

¹⁴ Centers For Medicare and Medicaid, *State Operations Manual : Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals*, A-0064 (June 2014) ("CMS hospital regulations do permit licensed practitioners (e.g., nurse practitioners, midwives, etc), as allowed by the State, to admit patients to a hospital..."); *Id.* at A-0458 (The H&P must be completed and documented by a physician (as defined in section 1861(r) of the Act), oromaxillo facial surgeon, or other qualified licensed individual in accordance with State law and hospital policy... Other qualified individuals are those licensed practitioners (such as nurse practitioners or physician assistants) who are permitted by their State scope of practice laws or regulations to conduct a history and physical examination, and who are also formally authorized by the hospital to conduct an H&P.") The Joint Commission, *Accreditation Manual for Hospitals and Critical Access Hospitals*, MS.03.01.01 (2009)("Licensed independent practitioners, physician assistants and some APRNs may perform medical histories and physical examinations if permitted by law, the medical staff bylaws and the organization.)

¹⁵ *Id.*

¹⁶ CMS, *2015 Hospital Outpatient Prospective Payment*, 571-78 (2014) ("The order must be furnished by a physician or other practitioner ("ordering practitioner") who is: (a) licensed by the state to admit inpatients to hospitals...")

- Confirmation that PAs are "ordering practitioners" which would allow them to continue to perform all aspects of hospital inpatient admissions.
- Clarification that there is no requirement for a physician signature on an admission order and, therefore, no requirement that a PA obtain a physician's signature/co-signature when a PA, authorized by state law and facility policy, writes an inpatient hospital admission order.
- Confirmation that CMS does not expect to see specific language in PA state law authorizing PAs to provide the admission order, but would defer that authority to the supervising physician, as allowed by State law.

AAPA is committed to working with CMS to establish policies that meet the medical needs of Medicare beneficiaries, especially for those patients in underserved communities. AAPA survey data confirms that approximately 40 percent of PAs deliver care in hospitals. It is essential that these highly skilled health professionals be authorized to provide care to the full extent of their education and expertise thus allowing for more efficient utilization of this country's healthcare workforce.

As we move to value-based care delivery models and manage an increased demand for healthcare services, maximizing the appropriate utilization of PAs is an imperative. Authorizing PAs to perform hospital inpatient admissions including the writing of the admission order as ordering practitioners in accordance with state law and hospital policy will streamline beneficiary access to quality care, shorten delays in patient care, reduce unnecessary medical costs and administrative burdens, improve patient satisfaction, and increase overall healthcare delivery efficiency.

AAPA appreciates the agency's consideration of our comments and looks forward to working with CMS to ensure the best possible care for Medicare beneficiaries. If you have any questions about our comments please do not hesitate to contact Michael Powe, AAPA's Vice President of Reimbursement & Professional Advocacy, at michael@aapa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John McGinnity". The signature is stylized and cursive, with a large initial "J" and "M".

John McGinnity, MS, PA-C, DFAAPA
President