



January 30, 2014

Elizabeth Richter  
Acting Director  
Center for Medicare  
Centers for Medicare and Medicaid Services  
Room 443F-13, Mail Stop C5-01-27  
7500 Security Boulevard  
Woodlawn, MD 21244

Dear Ms. Richter:

We are writing in behalf of the below listed organizations representing the nation's 3.1 million registered nurses, including 171,000 nurse practitioners and 7,100 certified nurse-midwives and certified midwives, regarding what we believe is an inadvertent impact of the CMS guidance issued September 5, 2013, entitled "Hospital Inpatient Admission Order and Certification." Specifically, we are very concerned that this guidance creates a significant unintended barrier to CNMs/CMs and NPs who have authority to admit patients under existing state law and hospital policy. We would like to meet with you personally to discuss the concerns outlined below.

As you are aware, the FY 2014 IPPS regulation established a requirement that every inpatient admission be made pursuant to an order signed by a physician or other qualified practitioner.<sup>1</sup>

You are likely aware that the APRN community has been engaged in an effort to change outdated regulatory language that limits their ability to practice to the full extent of their education and licensure, one aspect of which is admitting patients to the hospital. This is particularly important for midwives as hospital birth is a critical part of the care they provide, indeed, it is their primary focus. Currently, all but one state allow midwives to obtain admitting privileges. Twenty-five states allow midwives to practice entirely without a requirement that their work be supervised, or undertaken in collaboration with a physician. Likewise, nurse practitioners (who also admit patients) are not prohibited from admitting patients to hospitals where admitting privileges have been conferred. We are gratified to see that section 412.3 clearly permits "other qualified practitioners," such as CNMs and NPs to sign admission orders.

Section 424.13(d) contains the required elements of a certification. It states that a certification must be signed by the physician responsible for the case, or by another physician who has knowledge of the case and is authorized to do so by the responsible physician **or by the hospital's medical staff.** [emphasis added]

The Medicare General Information, Eligibility and Entitlement Manual, Chapter 4, Section 10.2 reflects the language of 424.13(d), saying that "A certification or recertification statement must

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<sup>1</sup> 42 CFR 412.3

be signed by the attending physician responsible for the case or by another physician who has knowledge of the case and is authorized to do so by the attending physician, **or by a member of the hospital's medical staff with knowledge of the case**" [emphasis added].

The regulation and manual provisions above state that an eligible provider who is "a member of the hospital's medical staff" may sign certifications. Where CNMs/CMs and NPs are members of their hospital's medical staff, pursuant to the regulatory and manual language, they are authorized to sign certifications.

We are concerned that the guidance CMS released on September 5, 2013 is not consistent with the regulatory or manual language. Instead, the guidance implies that a certification can only be signed by a doctor of medicine or osteopathy, or a dentist or doctor of podiatric medicine in certain specified circumstances.

Our concern with the guidance is that it implies that CNMs/CMs and NPs must seek physician validation of every decision on their part to admit, which conflicts with the language of the regulation and manual cited above.

Physicians are understandably reluctant to sign certifications for CNMs/CMs and NPs because of concerns over vicarious liability. They may, therefore, refuse to sign such certifications, or they may impose conditions on doing so that prohibit the CNMs/CMs or NPs from practicing to the full extent of their education and licensure. This situation can also be used as a business lever, allowing physicians to curtail, or entirely eliminate the practice of CNMs/CMs or NPs who they perceive as a competitive threat. For Medicare beneficiaries, this can mean reduced access to the kinds of services that are in shortest supply.

Compounding this problem is that, in order to reduce administrative complexity, or because other payers follow Medicare's lead, hospitals often arbitrarily apply this Medicare policy across the board with all patients, regardless of payer. Thus, CMS policy is having an impact on CNMs/CMs and NPs that goes well beyond Medicare. Because more than 95% of births attended by CNMs/CMs occur in a hospital setting, the inability to obtain physician certification for the necessity of midwife inpatient admission orders could effectively end their ability to engage in the very core of what they do. Likewise, patients requiring admission by nurse practitioners, particularly in physician shortage areas would lack access if every admission to a hospital must be certified necessary by a physician.

We request that CMS issue revised guidance, stipulating that, per the regulation and manual, where eligible providers are members of a hospital staff they may sign certifications of the need for an inpatient admission.

We also note that in many cases, CNMs/CMs and NPs have admitting privileges but are not allowed to participate as members of their hospital's medical staff. Clearly, the Secretary has authority to determine the cases in which certification is required, an argument that CMS set forth in its discussion of this policy (see 78 FR 50938-50940). The language of Section 1814(a)(3) states that the certification is required, "**only in such cases**, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided

by regulations” [emphasis added]. We suggest that CMS use this authority to revise its regulation to specify that a certification is not required in cases where an admission order has been signed by an eligible provider who is permitted to do so under state law and hospital bylaws, even if such eligible provider is not a member of the hospital’s medical staff.

We look forward to arranging a time to meet in-person to discuss this important issue. To make arrangements for such a meeting, you should reach out to Jesse Bushman with the American College of Nurse Midwives ([jbushman@acnm.org](mailto:jbushman@acnm.org) and 240-485-1843) and Jan Towers with the American Association of Nurse Practitioners ([jtowers@aanp.org](mailto:jtowers@aanp.org) and 703-740-2529).

Sincerely,  
American Association of Nurse Practitioners  
American College of Nurse-Midwives  
American Nurses Association  
National Association of Pediatric Nurse Practitioners  
Nurse Practitioners in Women’s Health

cc: Marilyn Tavenner  
Jonathan Blum