



September 2, 2014

Ms. Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-1613-P
P.O. Box 8013
Baltimore, MD 21244-1850

RE: CMS-1613-P: Medicare and Medicaid Programs: 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; Proposed Rule

Dear Ms. Tavenner:

The American College of Nurse-Midwives (ACNM) is pleased to submit the following comments regarding the “Medicare and Medicaid Programs: 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; Proposed Rule” published in the *Federal Register* on July 14, 2014.¹ ACNM is the professional association representing certified nurse-midwives (CNMs) and certified midwives (CMs) in the U.S. We hope that you find our comments helpful and look forward to your response in the final rule.

COMMENTS

XVI. Proposed Revision of the Requirements for Physician Certification of Hospital Inpatient Services Other Than Psychiatric Inpatient Services

ACNM strongly supports CMS’ proposal to require a physician certification only in cases where the inpatient stay amounts to 20 or more days in length. The FY 2014 IPPS regulation drew a clear distinction between admission orders and the physician certification and clarified that both were required for payment to be made for any Medicare covered inpatient admission. Many hospitals had been allowing the inpatient admission order to meet the longstanding requirement for certifications of the medical necessity of the admission. The FY 2014 IPPS final regulation

¹ 79 FR 40916

and subsequent guidance made clear that although advance practice providers such as CNMs were permitted to give an admission order, under the wording of the statute they were not permitted to sign the required certification.

Unfortunately, many hospitals began applying this policy across their entire patient population, which forced CNMs admitting their patients to the hospital to seek physician certification of the medical necessity of their admission orders. Physicians are understandably reluctant to certify admissions for patients with whom they may be entirely unacquainted. Setting aside the very real concern about vicarious liability, this practice was at least an imposition on provider time and an administrative burden.

Since virtually no maternity care patients stay in a hospital for 20 days or more, the change that CMS proposes would essentially eliminate this barrier to CNM practice. We therefore thank the agency for this helpful proposed modification to its approach and again express our strong support.

Refinements to Regulatory Language

We believe that the language of 42 CFR 412.3 should be revised to increase clarity and ensure it is understood consistent with the preamble discussion and CMS' prior guidance on which providers can issue admission orders. The specific changes we recommend are shown in ~~strikeout~~/underlined text below.

§412.3 Admissions.

(a) For purposes of payment under Medicare Part A, an individual is considered an inpatient of a hospital, including a critical access hospital, if formally admitted as an inpatient pursuant to an order for inpatient admission by a physician or other qualified practitioner in accordance with this section and §§482.24(c), 482.12(c), and 485.638(a)(4)(iii) of this chapter for a critical access hospital. This physician or other qualified practitioner order must be present in the medical record and be supported by the physician or other qualified practitioner admission and progress notes, in order for the hospital to be paid for hospital inpatient services under Medicare Part A. In addition to these physician or other qualified practitioner orders, inpatient rehabilitation facilities also must adhere to the admission requirements specified in §412.622 of this chapter.

(b) The order must be furnished by a qualified and licensed practitioner who has admitting privileges at the hospital as permitted by State law, and who is knowledgeable about the patient's hospital course, medical plan of care, and current condition. The practitioner may not delegate the decision (order) to another individual who is not authorized by the State to admit patients, or has not been granted admitting privileges applicable to that patient by the hospital's medical staff.

~~(c) The physician order also constitutes a required component of physician certification of the medical necessity of hospital inpatient services under subpart B of Part 424 of this chapter.~~

(d) The physician or other qualified practitioner order must be furnished at or before the time of the inpatient admission.

CONCLUSION

We thank CMS for the opportunity to comment on this important issue. Should you have any questions, please feel free to contact me at jbushman@acnm.org or 240-485-1843.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse S. Bushman". The signature is written in a cursive style with a long horizontal stroke at the end.

Jesse S. Bushman, MA, MALA
Director, Advocacy and Government Affairs