

# CMS Final Rule Changes Requirement for Physician Certification of Inpatient Admissions

---

## Background

In its final rule for FY 2014, the Centers for Medicare and Medicaid Services (CMS) indicated they were seeing an increasing number of patients being kept in hospital outpatient departments under observation, rather than being admitted to the inpatient setting. The reason hospitals did this was because if they admitted a patient and the admission was later determined to be not medically necessary, there would be no payment made to the hospital under the inpatient prospective payment system and it could be very difficult to obtain payment under other payment methodologies. Keeping patients under observation allowed the hospital to obtain payment under the outpatient payment system. This practice negatively impacted Medicare beneficiaries because outpatient cost sharing could frequently exceed what would be incurred had the patient been admitted and because post-discharge stays at skilled nursing facilities are only covered if provided pursuant to an inpatient hospital stay.

In an effort to provide hospitals with criteria that, if met, would increase the likelihood an inpatient claim would be paid, CMS established a set of policies for hospitals, which included a provision clarifying a requirement that every inpatient stay for a Medicare patient, regardless of length, would need to be accompanied by a physician certification of the medical necessity of the admission.

In doing so, the agency drew a clear distinction between the admission order and the certification. They understood that various types of practitioners, including CNMs<sup>1</sup> could, under applicable state law and hospital bylaw, order admissions. However, the statutory text requiring a physician certification does not allow any practitioner other than a physician to sign a physician certification, and the regulation reflected the statute.

When this policy went into effect on October 1, 2013, ACNM began to hear from members whose hospitals had decided to apply the requirement for physician certifications across their entire population, not just Medicare beneficiaries. ACNM staff and representatives from the nurse practitioners met with CMS to discuss the issue and how it had become a barrier to midwifery care. CMS subsequently released a proposed regulation with modifications to its policy and [ACNM wrote](#) in support of that proposal.

## Key Provision of the Final Rule Modifying the Physician Certification Requirement

In the [CY 2015 final hospital outpatient prospective payment system \(HOPPS\) regulation](#), CMS finalized its proposed revision such that physician certifications are

---

<sup>1</sup> Note that I do not include certified midwives here because they are not currently recognized as providers by Medicare and thus this policy applies only to certified nurse-midwives.

only required in cases where the inpatient stay lasts 20 days or longer, or results in outlier costs. This is a significant change in position from that laid out by the agency in its FY 2014 inpatient prospective payment system final rule.

In implementing the policy, CMS relied on statutory language that physician certification is required for inpatient services “which are furnished over a period of time.”<sup>2</sup> Commenters argued that the physician certification should only be required in cases of lengthy stays, but the agency cited legal authority that allows it to reasonably interpret the meaning of the statute and finalized a policy applying certification requirement to all inpatient stays, regardless of length.

In the CY 2015 final HOPPS regulation, CMS reversed course on their previous interpretation. They noted that experience with implementation, as well as feedback from affected providers had convinced them certifications were not necessary for every inpatient stay and instead would only apply to inpatient stays of 20 days or longer or which resulted in outlier costs.

The preamble discussion of this final policy appears on pages 66997-66999 of the *Federal Register* entry. The pertinent regulatory text appears in 42 CFR 424.3, found on pages 67033-67034 of the *Federal Register* entry. It reads thus:

§ 424.13 Requirements for inpatient services of hospitals other than inpatient psychiatric facilities.

(a) Content of certification and recertification. Medicare Part A pays for inpatient hospital services (other than inpatient psychiatric facility services) for cases that are 20 inpatient days or more, or are outlier cases under subpart F of part 412 of this chapter, only if a physician certifies or recertifies the following:

### **The Bottom Line for CNMs/CMs**

If your hospital has in place a policy requiring physician certification, regardless of which payer covers that patient’s care, there are two specific issues they should understand:

1. The policy applies only to Medicare patients. There is no legal basis for applying it to patients covered by any other payer. If a hospital applies it across the board, they are creating needless administrative work for their employees, notably CNMs/CMs and the physicians from whom they would be required to seek certification.
2. The revised regulation requires certifications only in the case of inpatients stays of 20 days or more, or for stays that generate outlier costs. It is exceedingly improbable that a maternity patient would need an inpatient stay of that type.

**The obvious conclusion is that for essentially all patients admitted to an inpatient setting by CNMs/CMs, there is no legal basis under this regulation for requiring that the medical necessity of these admissions be certified by a physician. Where hospitals have imposed such a policy, it should be removed.**

---

<sup>2</sup> Section 1814(a)(3) of the Social Security Act. See: [http://www.ssa.gov/OP\\_Home/ssact/title18/1814.htm](http://www.ssa.gov/OP_Home/ssact/title18/1814.htm)