Issue Brief

AMERICAN COLLEGE of NURSE-MIDWIVES
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Physician Certification of Inpatient Admissions under Medicare

Background: Each year the Centers for Medicare and Medicaid Services (CMS) releases a regulation updating payment parameters and policies for inpatient stays covered under the Medicare program. In the regulation for Fiscal Year 2014, which covers discharges occurring October 1, 2013 – September 30, 2014, CMS sought to deal with an issue related to extended observation stays in hospital outpatient departments.

CMS has taken note that the number of such stays has nearly tripled over five years and is concerned because this entails serious financial ramifications for Medicare beneficiaries. Hospitals engage in this behavior when they are unsure whether Medicare's claims processing contractors will decide that the admission was medically necessary. If the contractor decides the admission is not medically necessary, very little payment may be made for the service.

To provide hospitals with a level of security regarding their ability to be paid for inpatient admissions, CMS provided standards in this regulation that, if met, are more likely to result in payment. Among these standards was a requirement related to the order for an inpatient admission and a subsequent, separate certification as to the medical necessity of the inpatient admission.

The regulation now specifies that admission orders must be signed by "a qualified and licensed practitioner who has admitting privileges at the hospital as permitted by State law."[1] This particular requirement should not pose a problem for midwives that currently have authority to admit.

The problem arises due to a clarification made by CMS regarding something known as a "certification." Under Section 1814(a)(3) of the Social Security Act, Medicare pays for an inpatient admission, only if:

> a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) 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, and (B) the first such

[1] 42 CFR 412.3(b)

> certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period

In regulations finalized some time ago that implement Section 1814(a)(3), the agency requires that "certifications and recertifications must be signed by the physician responsible for the case, or by another physician who has knowledge of the case and who is authorized to do so by the responsible physician or by the hospital's medical staff."[2] This policy applies in both acute care and critical access hospitals.

It is our understanding that hospital practice has been to allow the signature on the admission order to meet the certification requirement. In creating the new regulatory text defining an admission, CMS drew a clear distinction between the admission order (which can be signed by practitioners other than a physician) and the certification, which, according to their existing regulation can only be signed by a physician.

After the regulation was promulgated, the agency issued further guidance, clarifying the distinction between the admission order and the certification, again reiterating that the latter can only be signed by a physician.[3]

Impact on Midwives: This policy technically applies only to inpatient admissions covered by Medicare. However, because Medicare policies are often imitated by other payers, or because hospitals often apply Medicare policies across the board, the impact of this policy could be very significant for midwives who have been admitting without having to obtain a subsequent physician certification as to the necessity of those admissions. They may find themselves in a situation where their hospital requires them to now obtain such certifications. Physicians may not want to sign certifications for patient with whom they are not familiar because of the inconvenience, implied vicarious liability concerns, misunderstandings about midwifery generally, or purely out of competitive self-interest. At the very least, this requirement imposes an administrative burden on the midwife, the physician and the hospital.

ACNM Position/Policy: ACNM is very strongly opposed to this policy and believes it represents a significant step backwards for midwives. The policy also runs counter to a long running effort by various advanced practice nursing (APRN) groups, supported by organizations such as the Institute of Medicine and AARP, to obtain the right to full practice authority. The American Hospital Association and the Association of American Medical Colleges both have serious concerns with other aspects of the guidance that CMS issued in its attempt to address their concern over outpatient admissions. While they do not see certifications as the core of their objection, they recognize it as unhelpful to the practitioners who serve their patients.

ACNM staff has had initial conversations with CMS and the hospital organizations to understand the policy and its impact. We are also working with the American

[2] 42 CFR 424.13(d)
[3] Hospital Inpatient Admission Order and Certification, September 5, 2013, Centers for Medicare and Medicaid Services

Association of Nurse Practitioners to formulate a joint response, as it impacts our respective memberships in similar ways.

We believe that the language of 1814(a)(3) allows CMS the flexibility to define exemptions to the requirement for a physician certification and we will be recommending that they do so in cases where an APRN has authority to admit under existing state law and hospital policies. We will also suggest to the agency that until such time as they can make the regulatory change, they should issue guidance specifically clarifying that this policy applies only to Medicare patients and should not be interpreted by hospitals to extend beyond that population.

Timeline: This policy applies to discharges occurring on or after October 1, 2013. If CMS decides to modify its regulation, it is unclear whether they would wait until their next annual regulatory cycle to do so, or if they would act sooner. In either case, the regulatory process takes several months, involves a notice of proposed rulemaking, collection and analysis of public comment and issuance of a final regulation. ACNM will keep abreast of developments on this issue and inform our membership accordingly.
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