June 11, 2012

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS–2370–P
P.O. Box 8010
7500 Security Boulevard
Baltimore, MD 21244-8010

RE: CMS–2370–P – Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration Under the Vaccines for Children Program

Dear Ms. Tavenner:

On behalf of the members of the American College of Nurse-Midwives (ACNM), I am submitting the following comments on the proposed rule released by the Centers for Medicare and Medicaid Services (CMS) on May 11, 2012, addressing primary care payment under Medicaid. ACNM lauds CMS' efforts to craft an expansive interpretation of the statutory language so as to encompass Medicaid services provided by certified nurse-midwives (CNM) and certified midwives (CM) in certain situations; however, we are disappointed that the proposed rule does not equitably treat all health professionals who are licensed to provide primary care services to Medicaid beneficiaries as authorized by state law and the Social Security Act. ACNM strongly urges CMS to consider avenues that would enable independently practicing certified nurse-midwives (CNM) and certified midwives (CM) to expand primary care services to Medicaid beneficiaries with the increased payment CMS provides in this proposed rule.

ACNM is the national professional organization representing Certified Nurse-Midwives (CNM®) and Certified Midwives (CM®). CNMs and CMs provide a full range of primary health care services for women from adolescence beyond menopause. These services include primary care, gynecologic and family planning services, preconception care, care during pregnancy, childbirth and the postpartum period, care of the normal newborn during the first 28 days of life, and treatment of male partners for sexually transmitted infections. Midwives provide initial and ongoing comprehensive assessment,

diagnosis and treatment. They conduct physical examinations; prescribe medications including controlled substances and contraceptive methods; admit, manage and discharge patients; order and interpret laboratory and diagnostic tests and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with women and families in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals and birth centers.

Midwives and Primary Care

Primary care is the provision of integrated, accessible health care services by clinicians who are accountable for addressing the majority of health care needs, developing a sustained partnership with patients, practicing within the context of family and community. CNMs/CMs meet all the elements of this definition.

In fact, Congress has long recognized midwifery as an essential service and mandated that all Medicaid plans cover "nurse-midwifery" services. Additionally, 42 CFR §482.1(a)(5) states "Section 1905(a) of the Act provides that 'medical assistance' (Medicaid) payments may be applied to various hospital services. Regulations interpreting those provisions specify that hospitals receiving payment under Medicaid must meet the requirements for participation in Medicare (except in the case of medical supervision of nurse midwife services. (See §§440.10 and 440.165 of this chapter)." Thus, in a state that permits midwives to admit patients (and in accordance with state law and practitioner privileges), CMS DOES NOT require Medicaid or other non-Medicare patients admitted by a midwife be under the care of a doctor of medicine or osteopathy.

Decades of research indicate that primary care services provided by advanced practice nurses and midwives compare favorably to those provided by physicians. In a recent systematic review of studies comparing midwifery care to physician care, researchers examined multiple outcomes. Results indicated that women cared for by CNMs compared to women of the same risk status cared for by physicians had:

- Lower rates of cesarean birth,
- Lower rates of labor induction and augmentation,
- Significant reduction in the incidence of third and fourth degree perineal tears,
- Lower use of regional anesthesia, and
- Higher rates of breastfeeding.[1]

[1] Newhouse RP, Stanik-Hutt J, White KM, et al. Advanced practice nursing outcomes 1990-2008: a systematic review. Nurs Econ. 2011;29(5):1-22.

In a review of maternity care processes of CNMs and physicians, research has concluded that care processes are heavily influenced by the provider group. Women in the CNM group were more likely to receive:

- Prenatal education focusing on health promotion risk reduction behaviors,
- A more hands on approach with a closer supportive relationship with their provider during labor and birth, and
- Fewer technological and invasive interventions.[2]

Researchers conducted a rigorous systematic review comparing midwife-led models of care and physician-led models of care and concluded that midwife-led care has benefit over other models of care for women of similar risk status. Women in the midwife-led models had:

- A significantly higher chance for a normal vaginal birth, fewer interventions, and successful initiation of breastfeeding,
- Care during labor provided by a midwife that the woman knew, and
- Increased sense of control during the labor and birth experience.[3]

CenteringPregnancy® is a midwifery-based, woman-centered model that incorporates risk assessment, support, and education into a unified program of group prenatal care. A randomized clinical trial was conducted at two university-affiliated prenatal clinics to compare select outcomes in women receiving care in a CenteringPregnancy® group and women receiving traditional prenatal care. Results indicated that women receiving CenteringPregnancy® group care experienced a 33% reduction in the risk for preterm birth and had significantly:

- Higher rates of breastfeeding,
- Higher readiness for labor and birth,
- Better prenatal knowledge, and
- Higher rates of satisfaction with care.

Affordable Care Act

The Affordable Care Act (ACA) has several important provisions that encourage greater utilization of CNMs/CMs due to their role in delivering primary care services. These include:

- Section 10101 of the ACA establishes numerous patient protections relating to health insurance coverage. Of particular significance to midwives is a provision stating that

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[2] Oakley D, Murtland T, Mayes F, et al. Processes of care, comparisons of certified nurse midwives and obstetricians. J Nurse Midwifery. 1995;5:399-409.

[3] Hatem MJ, Sandall D, Devane H, et al. Midwife-led versus other models of care for childbearing women. Cochrane Database of Syst Rev. 2009;4:CD004667.

group health plans or health insurance issuers offering group or individual health insurance coverage are required to permit female enrollees to obtain obstetrical or gynecological care without having first sought authorization or referral by the plan or a primary care physician. This provision ensures midwives are able to continue providing primary care services directly to women.

- Section 5308 of the ACA modifies the Advanced Education Nursing Grant program to stipulate that only midwifery programs accredited by the American College of Nurse-Midwives Accreditation Commission for Midwifery Education are eligible. The focus of the grant program is the development of midwives and advanced practice registered nurses (APRNs) with a focus on primary care.

- Section 5509 of the ACA authorizes a new Graduate Nursing Education Demonstration for four years to rapidly increase the number of midwives and APRNs with the clinical skills necessary to provide primary care, preventive care, transitional care, and chronic care management.

- Section 3114 of the ACA increased the rate of reimbursement for CNMs from 65% of the Medicare Part B fee schedule to 100% in an effort to provide equitable reimbursement for midwifery services. According to analysis from the American Nurses Association, more than 50% of midwifery services provided under the Medicare program were for primary care services, including well woman services for disabled and senior women. ACNM believes this percentage would be higher in Medicaid.

- Section 5208 of the ACA establishes a grant program to fund Nurse-Managed Health Clinics to expand access to vital primary care services. Led by midwives and APRNs, such facilities will also serve as a valuable clinical training site for delivery of primary care services.

Concerns with the Proposed Rule

Given the role CNMs/CMs currently play in delivering primary care services to women, as authorized by state law; the fact that nurse-midwifery services are a mandatory benefit under Medicaid; the focus of the ACA in expanding opportunities for midwives to receive training in primary care delivery and expanding facilities where midwives can provide primary care services; and the research that exists regarding the benefits of primary care services provided by CNMs/CMs, it is of great concern that a proposed rule to expand payment for primary care services under Medicaid would fail to fully cover the provision of midwifery services.

While Congress did not specifically name CNMs/CMs or other APRNs professions in Section 1202 relating to primary care payment under Medicaid for calendar years 2013 and 2014, CMS has seen fit to allow physicians to bill for services provided midwives

and APRNs and count them as eligible for the payment increase when under the supervision of a physician. This clearly indicates CMS understands the role midwives and APRNs play in providing primary care services, but the action excludes all independently practicing midwives and APRNs from being eligible for the payment increases. ACNM feels strongly that this policy is inequitable and encourages CMS to review the authority of the Secretary to modify this proposed rule ensuring all health professionals authorized by state law to provide primary care services are recognized in the final rule.

APRNs care for Medicaid beneficiaries in some of the most underserved parts of the United States. We remain concerned that access problems for such beneficiaries will be worsened when APRN-led practices are unable to compete with physician-led practices due to the inequitable reimbursement rates this proposed rule establishes.

Please contact Patrick Cooney at (202) 347-0034 or at patrick@federalgrp.com if you have questions regarding ACNM's comments. Thank you for your consideration of these comments.

Sincerely,

Lorrie Kline Kaplan, CAE
Executive Director
American College of Nurse-Midwives