Issue Brief

AMERICAN COLLEGE of NURSE-MIDWIVES
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# H.R. 4663, the "Protect Patient Access and Promote Hospital Efficiency Act," and Physician Certification of Inpatient Admissions under Medicare

**Background:** Each year the Centers for Medicare and Medicaid Services (CMS) releases regulations updating payment parameters and policies for hospital 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 tend to keep patients in outpatient observation when they are unsure whether Medicare's claims processing contractors will decide that an inpatient admission is 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.

New regulatory language provides a definition of an inpatient admission, indicating such 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 the fact that CMS has drawn a very clear distinction between the admission order and 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 existing statute and regulation can only be signed by a physician.

After the FY 2014 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 has been significant for midwives. They are finding themselves in situations where their hospital requires them to now obtain certifications. Physicians may not want to sign certifications for patient with whom they are unfamiliar because of the inconvenience, 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 Response:** ACNM staff discussed this situation with the American Association of Nurse Practitioners (AANP) as our respective members are similarly impacted by this policy. We contact hospital associations as well to verify with them that they would not oppose a change in policy that would permit ACNM/AANP members to sign certifications. We then met with CMS on March 4 to review our concerns.

CMS staff had discussed with their general counsel options for allowing APRNs/PAs to sign certifications, but concluded the language of the law did not allow it. They understood our concerns, but indicated a statutory change would have to occur for them to be able to modify their requirements.

Subsequent to the meeting with CMS, ACNM and AANP met with staffers from the Senate Finance Committee and House Ways and Means Committee to discuss a

[2] 42 CFR 424.13(d)
[3] Hospital Inpatient Admission Order and Certification, January 30, 2014, Centers for Medicare and Medicaid Services

potential statutory change. Ways and Means staff encouraged us to work with a member of the committee to develop legislation.

**H.R. 4663:** After meeting with Committee staff, ACNM and AANP worked with Representatives Diane Black (R-TN) and Janice Schakowsky (D-IL) to draft and introduce H.R. 4663, the "Protect Patient Access and Promote Hospital Efficiency Act." The bill was introduced on May 15, 2014.

H.R. 4663 makes a simple amendment to Section 1814(a)(3) of the Social Security act. The amendment allows a nurse practitioner, clinical nurse specialist, physician assistant or a certified nurse-midwife who is privileged and credentialed at the hospital in question to sign a certification for an admission by any one of those same provider types. The legislation does not impact state scope of practice laws.

Section 1814(a)(3) of the Social Security Act dates to 1965, a time when these provider types either did not exist, or were not nearly as commonly practicing in hospitals. Today, there are tens of thousands of CNMs, NPs,,CNS' and PAs working in hospitals across the entire country. H.R. 4663 makes a simple change that recognizes the reality of modern medical practice and ensures the removal of an unnecessary barrier to care for Medicare beneficiaries.