Issue Brief

AMERICAN COLLEGE of NURSE-MIDWIVES
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CMS Issues Regulation to Reduce Medicare Administrative Burden

Background
On May 12, 2014, the Centers for Medicare and Medicaid Services (CMS) released a final regulation implementing reforms to Medicare regulations that CMS has identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers. Provisions of interest to midwives are outlined below.

Hospital Medical Staff
Because previously existing wording in regulation establishing requirements for hospital medical staff could be misconstrued to exclude practitioners other than physicians from participation on medical staff, CMS made changes to its regulation at 42 CFR 482.22(a) to clarify that many provider types, other than physicians, may be included on medical staff, when permitted under state law. Specifically, the clarified regulatory text reads:

> (a) Standard: Eligibility and process for appointment to medical staff. The medical staff must be composed of doctors of medicine or osteopathy. In accordance with State law, including scope-of-practice laws, the medical staff may also include other categories of physicians (as listed at § 482.12(c)(1)) and non-physician practitioners who are determined to be eligible for appointment by the governing body.

Notably, in its preamble discussion of this issue, CMS made statements that indicate the agency clearly supports inclusion of APRNs on medical staff, including the following:

> Finally, we proposed to retain the language allowing for other types of non-physician practitioners (such as Advanced Practice Registered Nurses (APRNs), Physician Assistants (PAs), Registered Dietitians (RDs), and Doctors of Pharmacy (PharmDs)) to be included on the medical staff since we continue to believe that these practitioners, even though they are not included in the statutory definition of a physician, nevertheless have equally important roles to play on a medical staff and in the quality of medical care provided to patients in the hospital.[1]

And:

[1] 79 FR 27114 (available at: http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10687.pdf)

> Although our expectation is that all practitioners granted privileges are also members of the medical staff, if State law limits the composition of the medical staff to certain categories of practitioners, there is nothing in the CoPs that prohibits hospitals and their medical staffs from establishing certain practice privileges for those specific categories of practitioners excluded from medical staff membership under State law, or from granting those privileges to individual practitioners in those categories as long as such privileges are recommended by the medical staff, approved by the governing body, and in accordance with State law.[2]

Practitioners Permitted to Order Hospital Outpatient Services

CMS also revised its Hospital Outpatient Services Conditions of Participation to allow for practitioners who are not on the hospital's medical staff to order hospital outpatient services for their patients when authorized by the medical staff and allowed by State law. Specifically, the regulatory text at 42 CFR 482.54(c) now reads:

(c) Standard: Orders for outpatient services. Outpatient services must be ordered by a practitioner who meets the following conditions:

(1) Is responsible for the care of the patient.

(2) Is licensed in the State where he or she provides care to the patient.

(3) Is acting within his or her scope of practice under State law.

(4) Is authorized in accordance with State law and policies adopted by the medical staff, and approved by the governing body, to order the applicable outpatient services. This applies to the following:

(i) All practitioners who are appointed to the hospital's medical staff and who have been granted privileges to order the applicable outpatient services.

(ii) All practitioners not appointed to the medical staff, but who satisfy the above criteria for authorization by the medical staff and the hospital for ordering the applicable outpatient services for their patients.

Physician Responsibilities in CAHs, RHCs and FQHCs

Prior to this final regulation, Critical Access Hospitals (CAHs), Rural Health Centers (RHCs) and Federally Qualified Health Centers (FQHCs) were required to have a physician present in the CAH, RHC, or FQHC for sufficient periods of time at least once in every 2-week period, to provide medical direction, medical care services, consultation, and supervision of other clinical staff. The regulation further required a physician to be available through telecommunication for consultation, assistance with medical emergencies, or patient referral.

In the present regulation, CMS has revised its policies to eliminate the requirement that a physician must be onsite at least once in every 2-week period (except in extraordinary circumstances) to provide medical care services, medical direction, consultation, and supervision. For CAHs, CMS will now require that a doctor of medicine or osteopathy be present for "sufficient periods of time" to provide medical direction, consultation, and

[2] 79 FR 27115.

supervision for the services provided in the CAH, and be available through direct radio or telephone communication for consultation, assistance with medical emergencies, or patient referral. For RHCs and FQHCs, CMS will require that physicians would be required to periodically review the clinic or center's patient records, provide medical orders, and provide medical care services to the patients of the clinic or center.

CMS expects each facility to evaluate its services and adjust its physician schedule accordingly. An appropriate physician schedule would reflect the volume and nature of services offered.

In addition, in response to comments, CMS has revised a requirement that every two weeks a medical or osteopathic doctor review and sign a sample of outpatient records of patient care by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants. Instead, the regulation now requires that for CAHs, a physician:

> Periodically reviews and signs a sample of outpatient records of patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants only to the extent required under State law where State law requires record reviews or co-signatures, or both, by a collaborating physician.

For RHCs and FQHCs, the regulation has been revised to state that a physician must:

> (2) In conjunction with the physician assistant and/or nurse practitioner member(s), participates in developing, executing, and periodically reviewing the clinic's or center's written policies and the services provided to Federal program patients.
>
> (3) Periodically reviews the clinic's or center's patient records, provides medical orders, and provides medical care services to the patients of the clinic or center.