June 27, 2016

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-1631-P
PO Box 8013
Baltimore, MD 21244-8013
Letter Submitted On-Line at www.regulations.gov

RE: CMS-3295-P - Medicare and Medicaid Programs; Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care

Dear Mr. Slavitt:

On behalf of the American College of Nurse-Midwives (ACNM) I am pleased to submit these comments in response to the proposed rule titled "Medicare and Medicaid Programs; Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care," published in the *Federal Register,* on July 16, 2016.[1] We hope that you find our comments helpful and look forward to your response in the final rule.

COMMENTS IN RESPONSE TO PROPOSAL

F. Technical Corrections: Removal of Inappropriate References to §482.12(c)(1)

Under this provision, CMS proposes to remove several references to §482.12(c)(1) because the inclusion of the reference to this section of regulation inappropriately links a requirement applicable to Medicare only (that inpatients be under the care of the providers enumerated at §482.12(c)(1)) to non-Medicare populations.

As CMS notes, the statutory provision upon which §482.12(c)(1) is based, Section 1861(e)(4), applies the requirement that inpatients be under the care of one of the specified providers only to patients "with respect to whom payment may be made under this title." Consequently, regulatory references that extrapolate that requirement beyond the Medicare population are inappropriate and CMS' proposal to remove these references aligns the regulation with the statute.

ACNM strongly supports the removal of these references as proposed by CMS.

[1] 81 FR 39448

ADDITIONAL COMMENTS

Medical Staff

Current regulation at 482.22(a) stipulates that hospitals "may" include non-physician practitioners who are determined eligible for appointment on the hospital's medical staff. As CMS considers modifications to the COPs, we strongly recommend the agency revise 482.22 to make it mandatory that, to the extent permitted under applicable state law or regulation, hospitals include non-physician practitioners working in their facilities on their medical staff.

In the preamble to a 2012 regulation CMS stated that:

> We encourage medical staff and hospitals to take advantage of the expertise and skills of these non-physician practitioners when making recommendations and appointments to the medical staff. We agree with commenters that an appointment to the medical staff engenders a sense of mutual responsibility for the activities and work of the medical staff for physicians; however, we believe that these sentiments are also engaged when non-physician practitioners are appointed members of a hospital's medical staff. We encourage physicians and hospitals to enlist qualified non-physician practitioners to fully assist them in taking on the work of overseeing and protecting the health and safety of patients. This applies not only to the ''work'' of the medical staff—such as quality innovation and improvement, best practices application, and establishment of professional standards—but also to the everyday duties of caring for patients.[2]

We appreciate and agree with the position taken in this preamble discussion, but in the absence of a requirement for inclusion of non-physician practitioners on medical staff, it often does not take place.

Certified nurse-midwives (CNMs) and Certified Midwives (CMs), represented by ACNM, spend a significant amount of their time in the hospital setting. In 2014, these midwives attended more than 332,000 births nationwide and more than 94% of them took place in a hospital setting.[3] Because access to hospitals and being able to participate in the development of hospital bylaws and practice guidelines is so critical to midwifery practice, ACNM conducted a survey of its members in late 2011 to ask questions about this topic. We found that:

- 70.3% of those that had privileges were not accorded full participation on medical staff including the ability to vote
- 42.3% could not participate on medical staff committees

We continue to hear frequent reports from our members that full participation on hospital medical staff is unavailable. As CMS is aware, hospital medical staffs establish bylaws impacting who can work in the hospital and under what conditions. Without being able to have their voices heard, CNMs and CMs are unable to have input into decisions about whether they will be able to provide the full scope of services they are educated and certified capable of

[2] 77 *Federal Register* 29047
[3] CDC Vital Stats, available at: http://www.cdc.gov/nchs/data_access/vitalstats/vitalstats_births.htm

providing, or whether they will be able to implement the unique skills and techniques that are the hallmarks of midwifery care. In effect, they can be entirely or partially cut off from the ability to practice. This is detrimental to patient access to care.

ACNM therefore recommends that CMS give serious consideration to utilizing statutory authority available under 1861(e)(9) to require that hospitals include non-physician practitioners, such as CNMs and CMs, as full participants on their medical staffs.

CONCLUSION

We thank you for the opportunity to comment on this proposed rule. Should you have any questions regarding our comments, please reach out to me directly.

Sincerely,

Jesse S. Bushman, MA, MALA
Director, Advocacy and Government Affairs
240 485-1843
jbushman@acnm.org