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June 18, 2010

Ms. Nancy Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1498-P
PO Box 8011
Baltimore, MD 21244-1850

Submitted electronically to <http://www.regulations.gov>

Re: **Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services Medicaid Program.** CMS-1498-P; RIN 0938-AP80. 75 Fed. Reg. 23851 (May 4, 2010).

Dear Administrator Tavenner:

The American Nurses Association (ANA) welcomes the opportunity to offer comments regarding the above-referenced Proposed Rule from the Centers for Medicare & Medicaid Services (CMS).

The ANA is the only full-service professional organization representing the interests of the nation's 3.1 million registered nurses, the single largest group of health care professionals in the United States. We represent RNs in all roles and practice settings, through our state and constituent member nurses associations, and organizational affiliates. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the rights of nurses in the workplace, projecting a positive and realistic view of nursing, and advocating before Congress and regulatory agencies on health care issues affecting nurses and the public. Our members include Advanced Practice Registered Nurses (APRNs) such as Nurse Practitioners (NPs), Clinical Nurse Specialists (CNSs), Certified Nurse-Midwives (CNMs), and Certified Registered Nurse Anesthetists (CRNAs).

Within the recent Proposed Rule for the Hospital Inpatient Prospective Payment System, CMS included Section IX, "Proposed Changes to Medicare Conditions of

Participation Affecting Hospital Rehabilitation Services and Respiratory Care Services.”¹ CMS is proposing to clarify inconsistencies regarding “which practitioners are allowed to order rehabilitation and respiratory care services in the hospital setting.” The current standard for rehabilitation allows such services to be ordered by “practitioners who are authorized by the medical staff to order the services.” CMS expressed concern that the therapists themselves could order their own services. Conversely, the current standard for respiratory care services limits such orders only to doctors of medicine or osteopathy.

Consistent with the laws and regulations of many States, CMS is proposing to allow both rehabilitation and respiratory care services to be ordered by qualified, licensed practitioners, including NPs and PAs, who are responsible for the care of the patient and who are acting within their scope of practice under State law. CMS noted that clarification was requested by several interested parties, including The Joint Commission.

The specific proposed changes would amend the applicable regulations to read as follows:

§ 482.56 Condition of participation: Rehabilitation services

* * * *

(b) *Standard: Delivery of services.* Services must only be provided under the orders of a qualified and licensed practitioner who is responsible for the care of the patient, acting within his or her scope of practice under State law, and who is authorized by the hospital’s medical staff to order the services in accordance with hospital policies and procedures and State laws.

(1) All rehabilitation services orders must be documented in the patient’s medical record according to the requirements of § 482.24.

(2) The provision of care and the personnel qualifications must be in accordance with national acceptable standards of practice and must also meet the requirements of § 409.17 of this chapter.

§ 482.57 Condition of participation: Respiratory care services

* * * *

(b) * * *

(3) Services must only be provided under the orders of a qualified and licensed practitioner who is responsible for the care of the patient, acting within his or her scope of practice under State law, and who is authorized by the hospital’s medical staff to order the services in accordance with hospital policies and procedures and State laws.

(4) All respiratory care services orders must be documented in the patient’s medical record according to the requirements at § 482.24.²

¹ 75 Fed. Reg. 24050-60.

² 75 Fed. Reg. 24059-60.

Non-discriminatory language is in the best interest of patients and providers.

ANA has consistently urged CMS to replace outdated references to “physician” with language that recognizes the evolution of our health care system. Statutory and regulatory language that identifies only medical doctors and doctors of osteopathy has limited access to care and created costly administrative burdens. The proposed language serves to resolve one such problem, expanding the pool of providers who can ensure that patients receive rehabilitation and respiratory care services in a timely manner.

APRNs provide a wide range of critical healthcare.

CMS correctly identifies the need to expand the parameters for ordering respiratory care services and refers specifically to NPs and PAs. ANA would like to underscore the importance of this change for each of the four APRN roles. APRNs, licensed independent practitioners with advanced education and training, are educationally prepared to provide a scope of services across the health wellness-illness continuum to at least one population focus as defined by nationally recognized role and population-focused competencies.

Nurse Practitioners (NPs) practice autonomously in areas as diverse as family practice, pediatrics, internal medicine, geriatrics, and women’s health care. Both primary and acute care NPs provide initial, ongoing, and comprehensive care, which includes taking comprehensive histories, providing physical examinations and other health assessment and screening activities. NPs diagnose, treat, and manage patients with acute and chronic illnesses and diseases. This includes ordering, performing, supervising, and interpreting laboratory and imaging studies; prescribing medication and durable medical equipment; making appropriate referrals for patients and families, and ordering a host of healthcare services including rehabilitation and respiratory care services.

Clinical Nurse Specialists (CNSs) are clinical experts in evidence-based nursing practice within a specialty area, treating and managing the health concerns of patients and populations. The CNS specialty may be focused on individuals, populations, settings, type of care, type of problem, or diagnostic systems subspecialty. CNSs serve as patient advocates, consultants, and researchers in various settings.³ CNSs practice autonomously and integrate knowledge of disease and medical treatments into the assessment, diagnosis, and treatment of patients’ illnesses. These nurses design, implement, and evaluate both patient-specific and population-based programs of care. CNSs provide leadership in advancing the practice of nursing to achieve high quality and cost-effective patient outcomes as well as provide leadership of multidisciplinary groups in designing and implementing innovative alternative solutions that address

³ American Nurses Association (2004). *Nursing: Scope and Standards of Practice (15)*. Washington, DC: Nurses Books.Org.

system problems and/or patient care issues. As direct care providers, CNSs perform comprehensive health assessments, develop differential diagnoses, and may have prescriptive authority. Depending on their specialty and setting, they may have significant opportunities to order rehabilitation and respiratory care services for their patients.

Certified Nurse-Midwives (CNMs) provide a full range of primary health care services to women throughout the lifespan, including gynecologic care, family planning services, preconception care, prenatal and postpartum care, childbirth, and care of the newborn. This care is provided in diverse settings, which may include homes, hospitals, birth centers, and a variety of ambulatory care settings including private offices and community and public health clinics. The majority of patient care involves primary, preventive care, including gynecologic care such as annual exams and reproductive health visits, but in their role as primary care providers, CNMs have occasion to order rehabilitation and respiratory care services. Currently, 70 percent of the women seen by nurse-midwives are considered vulnerable by virtue of their age, socioeconomic status, education, ethnicity, or location of residence.⁴

Certified Registered Nurse Anesthetists (CRNAs) are prepared to provide the full spectrum of patients' anesthesia care and anesthesia-related care for individuals across the lifespan. CRNAs' patients can range from healthy through all levels of acuity. CRNAs provide care in diverse settings, including hospital surgical suites, obstetrical delivery rooms, ambulatory surgery centers, endoscopy and other clinics, acute care, pain management centers, and outpatient offices. As a result, ordering and administering respiratory care services often may be within a CRNA's scope of practice.

Improving the efficiency of care delivery will improve quality and control costs.

CMS has noted that the process of requiring physician countersignature of orders written by qualified, licensed NPs is "burdensome" to practitioners, both APRNs and physicians, as well the hospitals. Such requirements are not only burdensome, they often lead to a delay in patients getting urgently needed care, result in duplication of services (or missed services) and, as a result, drive up healthcare costs. Ending this "burdensome" practice is a long-overdue step in unleashing the potential of APRNs to provide the quality healthcare they are prepared to deliver.

Conclusion

With thousands of our citizens gaining health care coverage, we must redouble our efforts to ensure that these citizens can in fact gain access to quality care. These proposed changes, specifying that qualified and licensed practitioners acting within their scope of practice can order rehabilitation and respiratory care services, are a move in the right direction.

⁴ Nurse-Midwifery in 2008: Evidence-Based Practice: A Summary of Research on Midwifery Practice in the United States. Website of American College of Nurse-Midwives, www.midwife.org/siteFiles/news/nurse_midwifery_in_2008.pdf.

The American Nurses Association appreciates the opportunity to comment on this important rule. If we can be of further assistance, or if you have any questions or comments, please feel free to contact Lisa Summers, CNM, DrPH, Senior Policy Fellow, ANA Department of Nursing Practice and Policy, at Lisa.summers@ana.org or 301-628-5058.

Sincerely,

A handwritten signature in cursive script that reads "Mary Jean Schumann".

Mary Jean Schumann, MSN, MBA, RN, CPNP
Chief Programs Officer
American Nurses Association