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January 17, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8010
Baltimore, MD 21244-1810

Re: Request for recommendations regarding eliminating Medicare regulations that limit physician assistants and advanced practice registered nurses from practicing at the top of their license.

Dear Ms. Verma:

On behalf of our over 130 member hospitals and integrated health systems located in Wisconsin, the Wisconsin Hospital Association (WHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) request for additional input and recommendations to reform unclear, unnecessary, obsolete, or excessively burdensome Medicare regulations that limit utilization of advanced practice health care professionals by our members.

In Wisconsin, our member organizations, large and small, urban and rural, provide services well beyond the four walls of a hospital, and those services are provided by physicians, advanced practice nurses, physician assistants, and other non-physician providers.

Our members' embrace of coordinated care delivery models and providing care across a continuum of services inside and outside of the hospital has been a key driver in Wisconsin regularly being recognized as a top state for high quality care. With that comprehensive approach to care delivery, our members bring a perspective to regulatory burden across care settings that is often unique compared to other parts of the country.

We Appreciate CMS's Attention to Reforming Medicare Regulations That Do Little to Advance Quality Care.

Regulatory burden creates additional cost on the health care system and limits the productivity of health care providers. Wisconsin, like other states, have workforce challenges that impact our members' ability to meet the demands for accessible, high quality care for Wisconsin, and regulatory burden directly impacts the amount of clinical care that physicians and non-physician professionals can provide in one day. For those reasons, meaningfully reducing regulatory burden impacting care provided in hospitals is of significant importance to Wisconsin hospitals and health systems.

We appreciate steps that CMS has taken reduce regulatory burden, and CMS's efforts to continue to seek input from hospitals to identify additional regulatory reforms to reduce regulatory burden on organizations, administrators, physicians, and other clinicians when such reforms do not meaningfully impact health care quality and safety.

Support for Previous Reforms Clarifying the Authority of Non-Physician Practitioners in Hospital Settings.

WHA appreciated CMS's clarification in the Omnibus Burden Reduction Rule finalized in September 2019 that non-physician practitioners, including physician assistants, nurse practitioners, psychologists, and clinical nurse specialists,

when acting in accordance with State law, their scope of practice, and hospital policy, have the authority to record progress notes in a psychiatric hospital setting.

In our 2018 comment letter on supporting that clarification that rule, WHA noted that within their scope of practice, advanced practice clinicians such as physician assistants, nurse practitioners, and psychologists, have become important providers within psychiatric hospitals and other care settings, and are functioning in roles that previously were solely performed by physicians.

WHA also noted in its comment letter other recent positive changes CMS has made to recognize the roles that advanced practice clinicians perform in hospitals generally and including changes to CMS conditions of participation and payment reflecting the capabilities of advanced practice clinicians.

We further commented that our members continue to identify additional areas in need of clarification in the conditions of participation and payment regarding the use of advanced practice clinicians – within their scope of practice – in hospital settings generally. We identified several additional clarifications to help ensure non-physician practitioners' skills can be fully and appropriately used in hospital settings, and we reiterate those recommendations below.

Reduce Unnecessary Physician Co-Signatures by Further Addressing Inconsistent Regulations Limiting Full Use of Non-Physician Practitioner Skills

We recommend several clarifications regarding non-physician practitioners that can reduce unnecessary physician co-signatures and help ensure these important practitioners' skills can be fully and appropriately used in hospital settings.

As noted above, our member hospitals are increasingly utilizing nurse practitioners, physician assistants, and other non-physician, advanced practice clinicians who have a scope of practice that often enable them to provide care previously only provided by physicians. We appreciate CMS's efforts in recent years to better recognize the practice authority of such advanced practice clinicians, however, our members are encountering a patchwork of updates throughout the guidance for the Conditions of Participation and Conditions of Payment that often result in our members requiring physicians to co-sign orders, notes, and other documentation even when the advanced practice clinician's scope of practice allows the practitioner to perform the service. These additional co-signatures are not only an inefficiency, but they also can significantly and unnecessarily add to the burden on physicians to individually review care, even when that care is not required to be provided as a delegated act of the physician.

Specifically, our members have also seen inconsistent guidance regarding the need for physician co-signatures and we ask CMS to consider clarifying several items in the Conditions of Participation for hospitals and Conditions of Payment so that physicians are not asked to co-sign orders, certifications, notes and other documentation for services provided by non-physician practitioners if such service is within the non-physician practitioners' scope of practice.

Clarify the hospital and CAH conditions of participation that a patient may be under the care of a physician or an advanced practice, non-physician practitioner.

42 CFR 482.12(c)(1) and its Interpretive Guidelines appear to contemplate that an advanced practice, non-physician practitioner may admit a patient in accordance with state law but some are concerned that they may not recognize that such patients may be under the care of a non-physician practitioner. Like the recent clarification regarding progress notes in psychiatric facilities, we request that CMS consider clarifying that consistent with a practitioner's scope of practice, a patient may be under the care of either a MD/DO or a non-physician practitioner.

Clarify the PPS Hospital Conditions of Participation to permit an advanced practice, non-physician practitioner to admit a patient without a co-signature of a physician.

It appears that the CAH Conditions of Participation permit advanced practice, non-physician practitioners to admit a patient without a co-signature of a physician, but the PPS Hospital Conditions of Participation are less clear. We request that CMS consider aligning the CAH Conditions of Participation and PPS Conditions of Participation to make more clear that consistent with the practitioner's scope of practice, a patient may be admitted by an advanced practice, non-physician practitioner as an act of the practitioner and not as a delegated act of a physician. Further, similar clarification

is requested for admissions to swing beds and long-term care facilities. These changes would eliminate concerns that an MD/DO may be needed to cosign such admission orders.

Clarify that several required certifications of care in either PPS Hospital or CAHs may be made by advanced practice, non-physician practitioners without a co-signature of an MD/DO.

Throughout the PPS Hospital and CAH Conditions of Participation and Payment, hospitals are perceiving requirements to have an MD/DO sign certifications regarding extended stays, expectations of discharge without 96 hours, and outlier cases. Like the clarification regarding progress notes in psychiatric facilities, we request that CMS consider clarifying that consistent with a practitioner's scope of practice, such certifications that may be performed by an MD/DO may also be performed by a non-physician practitioner.

Clarify that an H&P in a CAH setting may be performed and documented by an advanced practice clinician without physician oversight or co-signature.

It appears that H&Ps may be performed and signed by an advanced practice clinician without a physician co-signature in a PPS Hospital settings, but in a CAH setting some believe that such H&P must be co-signed by an MD/DO. We request that CMS consider better aligning the CAH Conditions of Participation and PPS Conditions of Participation to make clear that consistent with the practitioner's scope of practice, that an advanced practice, non-physician practitioner may perform and sign an H&P without a physician co-signature. This clarification would eliminate concerns that an MD/DO cosign must such H&Ps in a CAH setting.

Clarify that discharge orders and summaries may be performed and documented by an advanced practice clinician without physician oversight or co-signature.

We recommend that CMS provide further clarification that advanced practice, non-physician practitioners have full authority, consistent with their scope of practice, under the PPS Hospital and CAH Conditions of Participation and Payment to make discharge orders and document and sign discharge summaries without the need for physician oversight or co-signature.

Thank you again for the invitation to recommend regulatory changes or clarifications to reduce unnecessary physician co-signatures and help ensure that non-physician advanced practice clinicians' skills can be fully and appropriately used in hospital settings.

If you have any questions, please contact Matthew Stanford at (608) 274-1820 or mstanford@wha.org.

Sincerely,

Matthew Stanford
General Counsel