



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-23-22-Hospital

DATE: September 21, 2023

TO: State Survey Agency Directors

FROM: Director, Quality, Safety & Oversight Group (QSOG), Director, Survey Operations Group

SUBJECT: Reinforcement of Interpretive Guidance for Nurse Midwives

Memorandum Summary

- **CMS is committed to improving access and quality care for pregnant and postpartum individuals and their infants.**
- **Hospital governing body requirements at §482.12(c)(1), (2), and (4) apply exclusively to Medicare patients/beneficiaries.**
- **For non-Medicare beneficiaries, including patients receiving Medicaid, hospitals may develop policies to permit nurse midwives to be credentialed and privileged to admit and care for hospital inpatients in accordance with State licensure laws.**
- **Critical Access Hospital (CAH) requirements for physician review and signature of records of patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants apply to all patients of the CAH.**

Background:

To improve access and quality care for pregnant and postpartum individuals and their infants, CMS launched the Maternal and Infant Health Initiative (MIHI) in July 2014. The MIHI was built on the foundation laid by CMS's [Expert Panel](#) on Improving Maternal and Infant Health Outcomes in Medicaid and Children's Health Insurance Program (CHIP), its 2020 report to CMS, as well as the input of a wide range of stakeholders on recommended strategies.

In its 2020 report to CMS, the Expert Panel recommended that Federal and State Medicaid and CHIP programs implement quality improvement initiatives to ensure women and infants have health care coverage and access to care. The panel recommended that these programs improve the delivery system and provide incentives such as payment and models of care that expand access to providers, including midwives, doulas, and peer educators, with care teams that include physicians, nurses, home visitors, and other health care workers.

In December 2022, CMS held its first meeting on maternal health to discuss key actions to improve the health of pregnant and postpartum individuals – including the need for a robust and diverse maternity care workforce and the ability for consumers to easily identify health systems engaged in improving maternal care. As part of this overall effort to improve maternal care nationwide, CMS continues to look for ways to support increased access to doulas, midwives, and birth centers for all individuals in need of this type of quality care.

Hospitals

The Medicare Conditions of Participation (CoPs) specifically identified at 42 CFR 482.12(c)(1) require the governing body to ensure that every Medicare patient is under the care of a doctor of medicine or osteopathy (MD/DO), a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, a chiropractor, and a clinical psychologist. Except for a doctor of medicine or osteopathy, the CoP limits all the practitioner types listed regarding the provision of patient care services based on state scope-of-practice and licensure laws and regulations, as well as other applicable legal authorizations required by a state. Additionally, 42 CFR 482.12(c)(2) requires patients to be admitted to the hospital only on the recommendation of a licensed practitioner permitted by the State to admit patients to a hospital. If a Medicare patient is admitted by a practitioner not specified in paragraph (c)(1) of this section, that patient must be under the care of a doctor of medicine or osteopathy. This is in accordance with the Social Security Act 1861(e)(4) which requires that “every patient with respect to whom payment may be made under this title must be under the care of a physician except that a patient receiving qualified psychologist services (as defined in subsection (ii)) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law.”

Finally, 42 CFR 482.12(c)(4) requires the hospital governing body to ensure that a doctor of medicine or osteopathy is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization and is not specifically within the scope of practice of a doctor of dental surgery, dental medicine, podiatric medicine, or optometry; a chiropractor; or a clinical psychologist, as that scope is defined by the medical staff; permitted by State law; and limited, under [paragraph \(c\)\(1\)\(v\)](#) of this section, with respect to chiropractors.

According to 42 CFR 482.1(a)(5), Section 1905(a) of the Act provides that 'medical assistance' (Medicaid) payments may be applied to various hospital services. Regulations interpreting those provisions specify that hospitals receiving payment under Medicaid must meet the requirements for participation in Medicare (except in the case of medical supervision of nurse midwife services. See [§§ 440.10](#) and [440.165](#)).

Medicaid requirements at 42 CFR 440.165 define nurse midwife services as “services that—

- (1) Are furnished by a nurse-midwife within the scope of practice authorized by State law or regulation and, in the case of inpatient or outpatient hospital services or clinic services, are furnished by or under the direction of a nurse-midwife to the extent permitted by the facility; and
- (2) Unless required by State law or regulations or a facility, are reimbursed without regard to whether the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.”

Critical Access Hospitals

By statute, CAHs are required to have inpatient care for patients that is "...provided by a physician assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility..." (Section 1820(c)(2)(B)(iv)(III) of the Act). This requirement is codified in the current CAH CoPs at 42 CFR 485.631(b)(1)(iv), which requires that a physician periodically review and sign the records of all inpatients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants. The CAH CoPs require physician oversight for all inpatients, including those who are non-Medicare patients.

While the CAH statute is silent with regard to supervision of outpatient services, the regulations at 42 CFR 485.631(b)(1)(v) require that 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. Therefore, the physician oversight requirement for outpatients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants is only applicable to the extent required under State law when relevant, and thus this is dependent upon State law. The CoPs do not prohibit nurse practitioners, clinical nurse specialists, certified nurse midwives, or physician assistants from practicing independently in a CAH providing care for outpatients when it is allowed based on State law.

Discussion:

Hospitals

These hospital regulations permit licensed practitioners (e.g., nurse practitioners, nurse midwives, etc.), as allowed by the State, to admit patients to a hospital. CMS does not require that these practitioners be employed by, under the supervision of, or associated with, an MD/DO unless required by state law, regulations, or facility policy. A hospital is not precluded from credentialing and granting privileges to practitioners not listed under paragraph (c)(1). Additionally, if not otherwise prohibited by state law, a hospital may elect to include these practitioners (such as advanced practice providers, including advanced practice registered nurses, clinical nurse specialists, physician assistants, and nurse midwives) as part of their medical staff.

In States that permit nurse midwives to admit patients (in accordance with hospital policy and practitioner privileges), CMS requires ONLY Medicare patients of a nurse midwife be under the care of an MD/DO. CMS **does not** require Medicaid or other non-Medicare patients admitted by a nurse midwife to be under the care of an MD/DO.

Critical Access Hospitals

For Critical Access Hospitals, CMS does not have the authority to remove the physician oversight requirement for inpatients at 485.631(b)(1)(iv) as this is a statutory requirement and the physician oversight requirement for outpatients at 485.631(b)(1)(v) is only applicable if required by State law.

Contact:

For questions or concerns relating to this memorandum, please contact QSOG_Hospital@cms.hhs.gov.

Effective Date:

Immediately. Please communicate to all appropriate staff within 30 days.

/s/

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Resources to Improve Quality of Care:

Check out CMS's new [Quality in Focus](#) interactive video series. The series of 10–15 minute videos are tailored to provider types and aim to reduce the deficiencies most commonly cited during the CMS survey process, like infection control and accident prevention. Reducing these common deficiencies increases the quality of care for people with Medicare and Medicaid.

Learn to:

- *Understand surveyor evaluation criteria*
- *Recognize deficiencies*
- *Incorporate solutions into your facility's standards of care*

See the [Quality, Safety, & Education Portal Training Catalog](#), and select [Quality in Focus](#)