



American Association of  
NURSE PRACTITIONERS™

*The Voice of the Nurse Practitioner®*

August 24, 2020

The Honorable Seema Verma  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

**RE: Medicare and Medicaid Programs; CY 2021 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Home Infusion Therapy Services Requirements; RIN 0938-AU-06**

Dear Administrator Verma,

On behalf of the American Association of Nurse Practitioners (AANP), and the more than 290,000 nurse practitioners (NPs) in the United States, we appreciate the opportunity to comment on the CY 2021 Home Health Prospective Payment System proposed rule. We commend CMS for quickly implementing Section 3708 of the CARES Act which permanently authorizes nurse practitioners to order and certify for Medicare and Medicaid home health services. We look forward to continuing to work with CMS to improve the ability of clinicians to provide the care their patients need during, and after, this pandemic.

NPs are advanced practice registered nurses (APRNs) who are prepared at the masters or doctoral level to provide primary, acute, chronic and specialty care to patients of all ages and walks of life. Daily practice includes: assessment; ordering, performing, supervising and interpreting diagnostic and laboratory tests; making diagnoses; initiating and managing treatment including prescribing medication and non-pharmacologic treatments; coordinating care; counseling; and educating patients and their families and communities. NPs practice in nearly every health care setting including home health care, schools and school-based clinics, hospitals, Veterans Health Administration and Indian Health Services facilities, emergency rooms, urgent care sites, private physician or NP practices (both managed and owned by NPs), skilled nursing facilities (SNFs) and nursing facilities (NFs), colleges and universities, retail clinics, public health departments, nurse managed clinics and homeless clinics. NPs hold prescriptive authority in all 50 states and the District of Columbia. NPs complete more than one billion patient visits annually.

Below are our comments regarding the implementation of the authority of nurse practitioners to order, certify and perform all necessary functions of care planning for Medicare and Medicaid patients receiving home health care services. We note that these comments were also made in response to interim final rule CMS 5531-IFC, where CMS stated that any comments would be reflected in the final rule for the home health prospective payment system. We reiterate these comments and again thank CMS for prioritizing the implementation of section 3708 of the CARES Act.

### Medicare Home Health Services

CMS has emphasized that implementing section 3708 was “imperative” so that “NPs, CNSs, and PAs would be able to practice to the top of their state licensure to certify eligibility for home health services, as well as establish and periodically review the home health plan of care.”<sup>1</sup> We look forward to continuing to work with CMS to ensure that the home health care process works seamlessly for NPs and their patients and upholds the congressional intent of retiring needless barriers to care for nurse practitioners and patients.

Below are recommendations on specific regulatory language consistent with section 3708 of the CARES Act. These recommendations seek to ensure that there is no confusion in the implementation of this legislation. We also have three broader recommendations for CMS in the promulgation of these regulations:

1. We request that CMS amend the newly defined term “allowed practitioner” to say “authorized practitioner.” “Authorize” is the terminology used in the CARES Act. This more accurately reflects the authority of NPs, CNSs, and PAs to provide home health care services to their patients.
2. We recommend the regulatory changes noted below, specifically in sections 424.22 and 484.2, to ensure that the statutory intent is maintained in the regulations. Our recommendations are consistent with CMS regulation of nurse practitioners services in the Medicare and Medicaid programs. CMS has stated that the agency does “not intend to introduce new burdensome requirements to address situations where there is no State requirement for collaboration.”<sup>2</sup> CMS has clarified this interpretation in § 410.75, which is incorporated into the regulatory text below, and recognizes this interpretation in the interim final rule.<sup>3</sup> Additional references to collaboration are unnecessary and may lead to an overly restrictive interpretation of the regulations, inconsistent with the CARES Act.
3. We also note that some states still have regulatory language regarding home health care that mirrors the pre-CARES Act language. Thus, in certain states NPs are authorized to perform the face-to-face assessment, but are still required by state law to refer their patients to physicians to certify the face-to-face. We request that CMS ensure that this rulemaking cannot be inferred to limit the authority of an NP to perform the face-to-face assessment in this circumstance.

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<sup>1</sup> *Ibid.*, at 27572.

<sup>2</sup> 63 FR 58814, 58872, (November 2, 1998). We note that 42 CFR 410.75(c)(ii) references a process of collaboration required by CMS “[i]n the absence of State law governing collaboration[.]” However, since this language is now twenty-two years old and every state has laws governing collaboration, including states where none is required, this language is no longer necessary.

<sup>3</sup> 85 FR 27550, 27555, (May 8, 2020).

We have added our specific recommendations in **bold** within the current regulatory language as noted below:

42 CFR § 409.43(c)

(C) Includes an attestation (relating to the physician's **or authorized practitioner's** orders and the date received) signed and dated by the registered nurse or qualified therapist (as defined in 42 CFR 484.115) responsible for furnishing or supervising the ordered service in the plan of care; and

(D) Is copied into the plan of care and the plan of care is immediately submitted to the physician **or authorized practitioner**; or

(ii) A referral prescribing detailed orders for the services to be rendered that is signed and dated by a physician **or authorized practitioner**.

(2) *Final percentage payment signature requirements.* The plan of care must be signed and dated—

(i) By a physician **or authorized practitioner** as described who meets the certification and recertification requirements of §424.22 of this chapter; and

(ii) Before the claim for each episode (for episodes beginning on or before December 31, 2019) or 30-day period (for periods beginning on or after January 1, 2020) is submitted.

(3) *Changes to the plan of care signature requirements.* Any changes in the plan must be signed and dated by a physician **or authorized practitioner**.

42 CFR § 409.43(d)

(d) *Oral (verbal) orders.* If any services are provided based on a physician's **or authorized practitioner's** oral orders, the orders must be put in writing and be signed and dated with the date of receipt by the registered nurse or qualified therapist (as defined in §484.115 of this chapter) responsible for furnishing or supervising the ordered services.

42 CFR § 409.64(a)(ii)

(ii) The hospital, CAH, SNF, or home health agency had submitted all necessary evidence, including physician **or authorized practitioner** certification of need for services when such certification was required;

42 CFR § 410.170(b)(1)

(b) ~~Physician~~ **Certification.** (1) For home health services, a physician **or authorized practitioner** provides certification and recertification in accordance with §424.22 of this chapter;

42 CFR § 424.22(a)(1)(v)(A)(2)

(2) The certifying nurse practitioner (as defined at §484.2 of this chapter), certifying clinical nurse specialist (as defined at §484.2 of this chapter), or a nurse practitioner or a clinical nurse

specialist who is working in accordance with State law ~~and in collaboration with a physician or in collaboration with an acute or post-acute care physician~~ with privileges who cared for the patient in the acute or post-acute care facility from which the patient was directly admitted to home health **in accordance with State law.**

**AANP Note:** As noted above, Section 3708 of the CARES Act does not include a collaboration requirement. While it was not the reported intent of CMS, the language in § 424.22 that states “in accordance with State law and in collaboration with a physician” could imply that there is a collaboration requirement being imposed, which is contrary to the intent of the CARES Act. Accordingly, we request that the language in § 424.22(a)(1)(v)(A)(2) be amended as noted above.

42 CFR § 484.2

*Nurse practitioner* means an individual as defined at §410.75. ~~(a) and (b) of this chapter, and who is working in collaboration with the physician as defined at §410.75(e)(3) of this chapter.~~

**AANP Note:** As noted above, the reference to collaboration is not necessary in this definition, which already incorporates 42 CFR § 410.75.

42 CFR § 484.50(d)(5)(i)

(i) Advise the patient, representative (if any), the physician(s) **or authorized practitioner(s)** issuing orders for the home health plan of care, and the patient's primary care practitioner or other health care professional who will be responsible for providing care and services to the patient after discharge from the HHA (if any) that a discharge for cause is being considered;

42 CFR § 484.55(a)(2)

(2) When rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service ordered by the physician **or authorized practitioner** who is responsible for the home health plan of care, and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

42 CFR § 484.110

The HHA must maintain a clinical record containing past and current information for every patient accepted by the HHA and receiving home health services. Information contained in the clinical record must be accurate, adhere to current clinical record documentation standards of practice, and be available to the physician(s) **or authorized practitioner(s)** issuing orders for the home health plan of care, and appropriate HHA staff. This information may be maintained electronically.

(a) *Standard: Contents of clinical record.* The record must include:

(1) The patient's current comprehensive assessment, including all of the assessments from the most recent home health admission, clinical notes, plans of care, and physician **or authorized practitioner** orders;

*Additional Coding and Form Changes:* We also urge CMS to revise the category II Healthcare Common Procedure Coding System (HCPCS) codes G0179, G0180 and G0181 currently utilized to report home health services. The descriptors for these codes use the terms, “physician re-certification,” “physician certification” and “physician supervision,” respectively. CMS noted in a recent MLN Matters article that NPs, CNSs, and PAs are authorized to bill for these codes, and that changes to the code descriptors were forthcoming. We request that CMS make these changes expeditiously.

Additionally, home health form CMS-485, while not required, is often used to certify home health, and uses the term “Attending Physician” in the signature block. We ask the agency to update this form to be provider neutral in accordance with the CARES Act. This will eliminate any confusion about the authority of NPs, CNS, and PAs to provide, order and certify home health services for beneficiaries.

**Medicaid Home Health Services- 42 CFR § 440.70**

As mentioned above, we appreciate that CMS is prioritizing the implementation of section 3708 of the CARES Act. For Medicaid, this provides immediate relief for both home health and the ordering of medical supplies, equipment and appliances which were significant barriers for nurse practitioners and their patients. The swift implementation of these provisions has streamlined the process of NPs to obtain home health care and supplies, equipment and appliances for their patients which has been essential.

Below is a recommended change to the regulatory language in 42 CFR § 440.70 that would clarify that NPs, physician assistants, certified-nurse-midwives and clinical nurse specialists are also authorized to perform the face-to-face assessment when the beneficiary is being admitted to home health after an acute or post-acute stay. This change will better align this provision with the Medicare language in 42 CFR § 424.22(a)(1)(v)(C).

**§ 440.70(f)(3)(v)**

*Current Text:* “For beneficiaries admitted to home health immediately after an acute or post-acute stay, the attending acute or post-acute physician.”

*Recommended Text:* For beneficiaries admitted to home health immediately after an acute or post-acute stay, a physician, physician assistant, nurse practitioner, clinical nurse specialist or certified nurse-midwife with privileges who cared for the patient in the acute or post-acute facility.



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### **Home Infusion Therapy**

While we understand that CMS must issue rulemaking consistent with the language in the 21<sup>st</sup> Century Cures Act, we remain concerned that even though NPs are “applicable providers” who can be the attending care provider for a patient receiving home infusion therapy, they still must have a physician certify the plan of care in this program. NPs are the largest group of providers delivering residence-based care, without physician certification. They understand the unique challenges of the home care setting. NPs also create plans of care and treat patients receiving infusion therapy in their offices and other settings without physician certification. The requirement that a physician must certify an NPs plan of care for home infusion therapy inhibits access to care and undermines the purpose of the legislation, which was to increase the ability of patients to receive infusion therapy at home instead of in costly facilities.

This will particularly result in additional complexity for patients and providers when a patient is receiving home health care services under a plan of care established by a nurse practitioner, but must obtain a physician-certified plan of care for home infusion therapy services. We stress the need for CMS to use its regulatory or waiver authority to enable NPs to certify home infusion plans of care to ensure access to this vital therapy and implore the Agency to better utilize the clinical preparation of NPs to serve their patients’ health care needs.

### **Conclusion**

Again, we appreciate CMS’ swift implementation of section 3708 of the CARES Act which permanently retires federal barriers to Medicare and Medicaid home health care. We look forward to continued partnership with CMS. Please contact MaryAnne Sapio, V.P. Federal Government Affairs, [msapio@aanp.org](mailto:msapio@aanp.org), 703-740-2529 for further discussion.

Sincerely,

David Hebert  
Chief Executive Officer