AANP | American Association of NURSE PRACTITIONERS®

Centers for Medicare and Medicaid Services (CMS) COVID-19 Waivers for Nurse Practitioners

Pursuant to the COVID-19 National Emergency Declaration, CMS has waived several Medicare and Medicaid program requirements for the duration of the Public Health Emergency (PHE). **This document focuses solely on waivers that removed Medicare and Medicaid barriers to care specifically for nurse practitioners. Please note that the only barrier noted below that is removed permanently is for Medicare and Medicaid home health care pursuant to the passage of the CARES Act. All other barriers are waived for the duration of the PHE.** Additional waivers, such as those impacting Medicare enrollment or telehealth for all clinicians, can be found on AANP's COVID-19 Policy Page and CMS' Coronavirus Waiver page.

Medicare and Medicaid Home Health Care- Permanent Pursuant to CARES Act

- *Medicare Home Health Care Services:* Section 3708 of the CARES Act authorizes a Medicare-eligible home health patient to be under the care of a nurse practitioner, clinical nurse specialist, or a physician assistant who is working in accordance with State law. These clinicians can: (1) order home health services; (2) establish and periodically review a plan of care for home health services (e.g., sign the plan of care), (3) certify and re-certify that the patient is eligible for Medicare home health services. Specifically, for Medicare, these changes are effective for Medicare claims with a "claim through date" on or after March 1, 2020.

- *Medicaid Home Health Services and Equipment*: Medicaid home health regulations now allow non-physician practitioners, including NPs, to order medical equipment, supplies and appliances, home health nursing and aide services, and physical therapy, occupational therapy or speech pathology and audiology services, in accordance with state scope of practice laws.

Hospitals, Psychiatric Hospitals, and Critical Access Hospitals (CAHs), including Cancer Centers and Long-Term Care Hospitals (LTCHs)

- *Physician Services:* CMS is waiving requirements under 42 CFR §482.12(c)(1)–(2) and §482.12(c)(4), which require that Medicare patients be under the care of a physician. This waiver may be implemented so long as it is not inconsistent with a state's emergency preparedness or pandemic plan. This authorizes hospitals to use other practitioners to the fullest extent possible.

- *CAH Personnel Qualifications:* CMS is waiving the minimum personnel qualifications for clinical nurse specialists at paragraph 42 CFR §485.604(a)(2), nurse practitioners at paragraph §485.604(b)(1)–(3), and physician assistants at paragraph §485.604(c)(1)–(3). Removing these Federal personnel requirements will allow CAHs to employ individuals in these roles who meet state licensure requirements and provide maximum staffing flexibility. These flexibilities should be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

- *CAH Staff Licensure:* CMS is deferring to staff licensure, certification, or registration to state law by waiving 42 CFR §485.608(d) regarding the requirement that staff of the CAH be licensed, certified, or registered in accordance with applicable federal, state, and local laws and regulations. This waiver will provide maximum flexibility for CAHs to use all available clinicians. These flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

- *Responsibilities of Physicians in CAHs:* 42 CFR § 485.631(b)(2). CMS is waiving the requirement for CAHs that a doctor of medicine or osteopathy be physically present to provide medical direction, consultation, and supervision for the services provided in the CAH at § 485.631(b)(2). CMS is retaining the regulatory language in the second part of the requirement at § 485.631(b)(2) that a physician be available "through direct radio or telephone communication, or electronic communication for consultation, assistance with medical emergencies, or patient referral."

Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs)

- *Certain Staffing Requirements:* 42 CFR 491.8(a)(6). CMS is waiving the requirement in the second sentence of § 491.8(a)(6) that a nurse practitioner, physician assistant, or certified nurse-midwife be available to furnish patient care services at least 50 percent of the time the RHC and FQHC operates. CMS is not waiving the first sentence of § 491.8(a)(6) that requires a physician, nurse practitioner, physician assistant, certified nurse-midwife, clinical social worker, or clinical psychologist to be available to furnish patient care services at all times the clinic or center operates. This will assist in addressing potential staffing shortages by increasing flexibility regarding staffing mixes during the PHE.

- *Physician Supervision of NPs in RHCs and FQHCs:* 42 CFR 491.8(b)(1). We are modifying the requirement that physicians must provide medical direction for the clinic's or center's health care activities and consultation for, and medical supervision of, the health care staff, only with respect to medical supervision of nurse practitioners, and only to the extent permitted by state law. The physician, either in person or through telehealth and other remote communications, continues to be responsible for providing medical direction for the clinic or center's health care activities and consultation for the health care staff, and medical supervision of the remaining health care staff.

Long-Term Care Facilities and Skilled Nursing Facilities (SNFs) and/or Nursing Facilities (NFs)

- *Physician Delegation of Tasks in SNFs*: 42 CFR 483.30(e)(4). CMS is waiving the requirement in § 483.30(e)(4) that prevents a physician from delegating a task when the regulations specify that the physician must perform it personally. This waiver gives physicians the ability to delegate any tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who meets the applicable definition in 42 CFR 491.2 or, in the case of a clinical nurse specialist, is licensed as such by the State and is acting within the scope of practice laws as defined by State law. We are temporarily modifying this regulation to specify that any task delegated under this waiver must continue to be under the supervision of the physician. This waiver does not include the provision of § 483.30(e)(4) that prohibits a physician from delegating a task when the delegation is prohibited under State law or by the facility's own policy.

- *Physician Visits:* 42 CFR 483.30(c)(3). CMS is waiving the requirement at § 483.30(c)(3) that all required physician visits (not already exempted in § 483.30(c)(4) and (f)) must be made by the physician personally. CMS is modifying this provision to permit physicians to delegate any required physician visit to an NP, PA, or CNS who not an employee of the facility, who is working in collaboration with a physician, and who is licensed by the State and performing within the state's scope of practice laws.

End Stage Renal Disease Facilities

- *Time Period for Initiation of Care Planning and Monthly Visits:* CMS is modifying two requirements related to care planning, specifically: CMS is modifying the requirement that requires the ESRD dialysis facility to ensure that all dialysis patients are seen by a physician, NP, CNS or PA providing ESRD care at least monthly, and periodically while the hemodialysis patient is receiving in-facility dialysis. CMS is waiving the requirement for a monthly in-person visit if the patient is considered stable and also recommends exercising telehealth flexibilities, e.g. phone calls, to ensure patient safety.

- *Transferability of Credentialing:* CMS is modifying the requirement at 42 CFR §494.180(c)(1) which requires that all medical staff appointments and credentialing are in accordance with state law, including attending physicians, physician assistants, nurse practitioners, and clinical nurse specialists. These waivers will allow clinicians that are appropriately credentialed at a certified dialysis facility to function to the fullest extent of their licensure to provide care at designated isolation locations without separate credentialing at that facility, and may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

Supervision of Diagnostic Tests

- *NP Supervision of Diagnostic Tests**:*** — Under Medicare policy, while NPs are authorized to order and perform diagnostic tests, they are not authorized to bill for the supervision of diagnostic tests when performed by other clinicians. Under the flexibility announced in this interim final rule, NPs will be authorized to supervise the performance of diagnostic tests in accordance with state law for the duration of the declared public health emergency.
  (This waiver was enacted into permanent policy in the Calendar Year 2021 Medicare Physician Fee Schedule Final Rule).