

August 24, 2017

The Honorable Patrick J. Tiberi  
House Ways and Means Health Subcommittee

RE: Medicare Relief Red Tape Project

Dear Mr. Chairman:

On behalf of the undersigned organizations, we are pleased to provide the following comments on the Medicare Relief Red Tape Project:

- Align Medicare policy with state scope of practice consistent with the recommendations of the National Academy of Medicine, and remove costly and unnecessary supervision requirements.
- Ensure protection of patient choice in the Medicare Administrative Contractor local coverage determination process.
- Retire barriers to patient access to timely care by authorizing NPs, CNMs and CNSs to certify their patients need for vital home health care services.

### **Background on APRNs**

The community of Advance Practice Registered Nurses (APRNs), which includes Certified Nurse-Midwives (CNMs), Certified Registered Nurse Anesthetists (CRNAs), Clinical Nurse Specialists (CNSs), and Nurse Practitioners (NPs), ensures patient access to high quality healthcare that is cost-effective. However, federal policy barriers to APRN practice continue to exist, impairing access to services, impeding patient choice, and raising healthcare costs.

### **Align Medicare Policy with State Scope of Practice Consistent with the Recommendations of the National Academy of Medicine, and Remove Costly and Unnecessary Supervision Requirements**

We appreciate the Subcommittee's commitment towards reducing regulatory burden in the Medicare program. The current regulations in some cases encourage wasteful and ineffective care. As payment moves to rewarding desired care outcomes and providing the best care at lower cost, adoption of outcome and evidenced-based regulations that reward and support high-quality, team-based care will focus attention on population and community needs at the local level. With this in mind, the APRN community recommends that the Subcommittee should direct the Centers for Medicare and Medicaid Services (CMS) to remove costly and unnecessary requirements relating to physician supervision. Given the growing population of persons in the United States requiring healthcare, particularly among Medicare eligible populations, physician supervision requirements stand in the way of utilizing the highly skilled APRN workforce. Unnecessary requirements for physician supervision of APRNs contribute to duplication and waste in the healthcare delivery system. There is no evidence that supervision requirements contribute to higher quality, lower cost, greater value or increased access to healthcare. On the contrary, ample evidence points to the value provided by APRNs.

Our request corresponds with a recommendation from the National Academy of Medicine's (NAM) report titled *The Future of Nursing: Leading Change, Advancing Health*, which outlines several paths by which patient access to care may be expanded, quality preserved or improved, and costs controlled through greater use of APRNs.<sup>1</sup> The NAM report specifically recommends that, "advanced practice registered nurses should be able to practice to the full extent of their education and training."<sup>2</sup>

If regulatory requirements are meaningless in practice, contribute to greater healthcare costs, and are contrary to existing evidence regarding patient safety and access to care, they are unnecessary and should be eliminated.

### **Ensure Protection of Patient Choice in the Medicare Administrative Contractor Local Coverage Determination Process**

We recommend that the Subcommittee direct CMS to ensure that patient free choice is not violated in local coverage determinations. Under the current statute<sup>3</sup>, both patients and providers do not have any recourse for filing a claim prior to the issuance of a local coverage determination (LCD) by a Medicare Administrative Contractor (MAC) as a future LCD that is set to become effective. Without a process for protection, MACs can exceed their authority by issuing an LCD contradicting existing CMS regulation and policy and scope of practice under state law resulting in patient denials of services that are medically necessary and vital to patient access to appropriate healthcare.

We request that the Committee ensure the MAC Advisory Committees consist of a cross section of APRNs in addition to other health care providers. The LCD should represent a cross section of APRNs who provide primary, acute and specialty health care to individuals in those geographical areas. We request the Committee take the following actions:

- a) ensure that LCDs do not contain any language or provision that limits, denies or could be reasonably construed to limit or deny the free choice of a patient [*as provided under Section 1802 (a)*<sup>4</sup>] to obtain health services from any institution, agency, or person, including a health care provider [*as defined by Sections 1842(b)(18)(C) and 1861(r)*] who is acting within the scope of that provider's state license or certification, qualified to participate under this title if such institution, agency, or person undertakes to provide him or her such services, with respect to Medicare participation, reimbursement, coverage of services or indemnification;
- b) develop a process by which a Medicare beneficiary or his or her authorized representative, or an adversely affected health care provider, has recourse for filing a claim under the provisions of this paragraph prior to the finalization of a local coverage determination,
- c) require each Medicare administrative contractor to provide free of charge to a Medicare beneficiary or his or her authorized representative or to an adversely affected health care provider, any internal rule, guideline, protocol, or other similar criterion which was relied

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<sup>1</sup> National Academy of Medicine. *The future of nursing: leading change, advancing health*. Washington, DC: The National Academies Press, p. 3-13 (pdf p. 108) 2011.

<sup>2</sup> NAM op. cit., p. 9.

<sup>3</sup> 42 U.S. Code § 1395y

<sup>4</sup> 42 U.S. Code § 1395a

upon in making its proposed or final determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making its proposed or final determination. This would include an explanation of the scientific or clinical judgment for the determination and must provide the identification of medical or scientific experts whose advice was obtained on behalf of the contractor in connection with its determination, without regard to whether the advice was relied upon in making the proposed or final determination; and

d) in the case of a failure by a Medicare administrative contractor to comply with the provisions of this paragraph, the Secretary shall impose a civil monetary penalty of \$10,000 for each day for each individual with respect to which such a failure occurs.

### **Retire Barriers to Patient Access to Timely Care by Authorizing NPs, CNMs and CNSs to Certify their Patients Need for Vital Home Healthcare Services**

Today NPs, CNMs, and CNSs play an important role in managing and delivering healthcare to Americans. They are recognized under state laws and regulations to complete and sign physical examination forms and other medical certification documents. Currently, these providers with patients who need home healthcare services must locate a physician who will document the assessment for this care. Further, even though the APRN providers are authorized to perform a face-to-face assessment of the patient's needs, the *Affordable Care Act* requires that a physician documents that the encounter has taken place, even if the physician is not involved in the assessment. These delays in treatment jeopardize the health of the patient and cause the Medicare program to incur additional costs by requiring the participation of an additional provider. We urge the Committee to work to ensure passage of H.R. 1825 *the Home Health Care Planning Improvement Act of 2017* which will make it possible for these providers to offer necessary services for their Medicare patients by allowing them to certify patients, under their care, to be eligible for home healthcare services.

We thank you for the opportunity to comment on the Medicare Relief Red Tape Project. Should you have any questions regarding these matters, please feel free to contact the AANA Senior Director of Federal Government Affairs, Ralph Kohl, at 202.484.8400, [rkohl@aanadc.com](mailto:rkohl@aanadc.com).

Sincerely,

American Association of Nurse Anesthetists  
American College of Nurse Midwives  
American Organization of Nurse Executives  
National Association of Clinical Nurse Specialists  
National Association of Nurse Practitioners in Women's Health  
National Association of Pediatric Nurse Practitioners  
National League for Nursing  
National Organization of Nurse Practitioner Faculties