



December 21, 2011

Marilyn Tavenner  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attn: CMS-3244-P  
P.O. Box 8010  
7500 Security Boulevard  
Baltimore, MD 21244-8010

RE: CMS-3244-P – Medicare and Medicaid Programs; Reform of Hospital and Critical Access Hospital Conditions of Participation; Proposed Rule (76 Fed.Reg. 65891, October 24, 2011)

Dear Ms. Tavenner:

On behalf of the members of the American College of Nurse-Midwives (ACNM), I am pleased to submit these comments on the recently issued proposed rule titled “Medicare and Medicaid Programs; Reform of Hospital and Critical Access Hospital Conditions of Participation (CoP),” (76 Fed. Reg. 65891, October 24, 2011).

This rule represents a powerful opportunity for the Center for Medicare and Medicaid Services (CMS) to promote full utilization of our health professional workforce and expand access to health care services. It is also an opportunity for CMS to further advance a multi-stakeholder governance model in our nation’s health systems—an approach which is achieving tangible results in improving the quality and effectiveness of health care services and the value of our health expenditures.

In this important context, we view this proposed rule as a positive step forward. However, we believe that our ability to achieve these results depends on further strengthening this rulemaking in several key areas described below.

**About ACNM and our Membership**

ACNM is the national professional organization representing Certified Nurse-Midwives (CNM®) and Certified Midwives (CM®). CNMs and CMs provide a full range of primary health care services for women from adolescence beyond menopause. These services include primary care, gynecologic and family planning services, preconception care, care

during pregnancy, childbirth and the postpartum period, care of the normal newborn during the first 28 days of life, and treatment of male partners for sexually transmitted infections. Midwives provide initial and ongoing comprehensive assessment, diagnosis and treatment. They conduct physical examinations; prescribe medications including controlled substances and contraceptive methods; admit, manage and discharge patients; order and interpret laboratory and diagnostic tests and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with women and families in diverse settings such as ambulatory clinics, private offices, community and public health systems, homes, hospitals and birth centers.

### **Recommendations for Strengthening the CoPs**

ACNM supports CMS's efforts in this proposed rule to improve access to care provided by midwives and advanced practice registered nurses (APRNs). Specifically, CMS proposes to revise the definition of Medical Staff at §482.22, to *"...provide hospitals the clarity and flexibility they need under federal law to maximize their staffing opportunities for all practitioners, and particularly for non-physician practitioners, under their individual States' laws"* (page 65893). This goal is in line with the landmark 2010 Institute of Medicine report, "Future of Nursing: Leading Change, Advancing Health," which specifically recommends the agency:

***"Amend or clarify the requirements for hospital participation in the Medicare program to ensure that advanced practice registered nurses are eligible for clinical privileges, admitting privileges, and membership on medical staff."***

ACNM endorses the recommended change to Section 482.22(a)(5) of the proposed rule. Specifically, we support the new requirement that Medical Staffs examine credentials of all candidates applying for practice privileges and medical staff membership within the hospital, as well as the credentials of practitioners applying only for hospital practice privileges. ACNM also supports the new requirement that Medical Staffs make recommendations to the governing body for the appointment of each of these candidates and the approval of privileges, in accordance with State law and hospital policies and procedures. We believe that these changes will ensure that each applicant is reviewed and considered based upon his or her own experience and expertise as defined by State law.

The importance of getting these rules "right" cannot be overstated. The CoPs have an impact well beyond the Medicare beneficiary population—they set the standard for hospital practices overall, thereby affecting the care available to all patients. Hospitals must be positioned to address the needs of the over 30 million newly eligible Medicaid and private insurance patients under the Affordable Care Act beginning in 2014. We face a critical shortage of primary care providers and maternity care providers. Strengthening the CoPs is a key policy tool for addressing these challenges. It is critical

that these rules allow CNMs/CMs and APRNs to deliver services to the fullest extent of their scope of practice, as recognized by State law.

In this context, we recommend that CMS make the following additional modifications to §428.22:

- **Medical Staffs must be representative of all types of health professionals who require clinical privileges to practice, including CNMs/CMs and APRNs as authorized by State law.** Balanced representation of health professionals on Medical Staffs will benefit patients and local communities. Each professional on a Medical Staff should have access to full voting privileges and be able to serve on hospital committees addressing care provided in the facility. We strongly urge CMS to promote this multi-stakeholder model more vigorously.
- **Medical Staffs must utilize uniform procedures for consideration of applications for medical staffing and clinical privileges.** ACNM recommends that Medical Staffs be required to complete a review and determination of each application for clinical privileges within a sixty-day (60) period.
- **Require that hospitals notify applicants for medical staffing and clinical privileges in writing of the determination of their application.** In cases in which applications are denied, require that hospitals include a full statement of the rationale for such decision, any specific information utilized in making the decision and hearing opportunities to discuss the outcome.
- **Include a definition of APRNs which includes CNMs and a definition of midwives which includes CNMs and CMs as certified by the American Midwifery Certification Board.** These clarifications are important because due to variations in State laws, not all CNMs/CMs are licensed as APRNs in the U.S. These definitions will prevent any possible confusion for patients, hospitals, and health professionals alike. The proposed rule fails to define these terms.

These common-sense modifications to the proposed rule would go a long way towards ensuring that midwives, APRNs and other appropriately credentialed and licensed health professionals are allowed to practice to the fullest extent of their education and training, in accordance with State law. Such changes are vital to our nation's efforts to expand access to safe, cost-effective healthcare.

#### **ACNM Survey Demonstrates Significant Barriers in Clinical Privileging**

In an effort to provide CMS the most accurate and informed feedback on this proposed rule, ACNM surveyed its membership on a variety of issues relating to the clinical privileging process. The "ACNM Credentialing and Hospital Privileging Survey" was provided to ACNM members over a 14-day period from November 30 to December 13, 2011. Some 1,894 ACNM members completed responses to the survey during this time.

The following survey findings underscore how important it is that CMS take steps now to go further in its revisions to the CoPs:

- **70.3% of respondents** stated they DID NOT have full medical staff privileges.

The proposed rule asserts that most APRNs are presently receiving clinical privileges as members of the medical staff. With respect to CNMs/CMs, it appears that this is not the case.

- **79.3% of respondents** stated they DID NOT have full voting privileges within the medical staffs of their local hospital facilities.

Without full voting privileges it is difficult to be a full partner in the delivery of quality, cost effective care. Multi-stakeholder practice environments yield the best results. Midwives and APRNs need a seat at the table.

- **14.8% of respondents** stated they had been denied access to a credentialing application or told that they could not apply for clinical privileges because the hospital would not consider sending or receiving an application from a midwife.

The reforms proposed to §482.22(a)(5) should help to reduce this number by ensuring CNMs/CMs have access to applications for clinical privileges which will then be evaluated by the governing body of the hospital.

- **45% of respondents** reported they had been told they must be employed by a physician practice or by the hospital in order to obtain hospital privileges.

The expansion of independent midwifery practices led by CNMs/CMs has positive implications for women's access to timely and critical services. Requiring employment by a physician practice or by the hospital is anti-competitive and limits health care options and alternatives for women.

- **65.4% of respondents** stated they had been granted privileges to practice on the medical staff but had limitations or additions, such as supervision or co-signature requirements or restricted scope of practice, that other clinicians on the medical staff do not have.
- **66.2% of respondents** stated that they or another midwife they know has been denied access to clinical privileges and that this denial has reduced access to services for women in their community.

**In Conclusion**

ACNM's member survey attests to the needless barriers to care that are systemically embedded in the clinical privileging process nationwide. Meeting our nation's health care quality and access challenges requires that all health professionals be allowed to practice to the fullest extent of their education and training. We clearly have a long way to go to attain that vision.

Now is the time for CMS to enact policies to break down the barriers that hold us back, and the Medicare CoPs present an ideal opportunity to do so. ACNM respectfully asks that CMS give thoughtful consideration to this survey data and our recommendations for addressing these pervasive problems. While we applaud CMS for taking steps in the right direction, our members' experiences suggest that, as written, this proposed rule will not meaningfully improve access to care.

Please contact ACNM's federal representative Patrick Cooney at (202) 347-0034 or at [patrick@federalgrp.com](mailto:patrick@federalgrp.com) to discuss these comments further or if ACNM can be of additional assistance. Thank you for your attention to these important issues, and for consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Holly Powell Kennedy".

Holly Powell Kennedy, CNM, PhD, FACNM, FAAN  
President