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## HOSPICE AND PALLIATIVE CARE PRACTICE GROUP

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### HOSPICE UTILIZATION OF NURSE PRACTITIONERS

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Hospices often have questions regarding how to best utilize a nurse practitioner's special skills and how to bill Medicare for nurse practitioner services. Federal and state laws dictate the types of services that nurse practitioners may provide. The following are a few of the questions that hospices frequently ask regarding nurse practitioners along with brief answers.

1. *Do the Medicare hospice regulations permit a nurse practitioner to act as a hospice patient's attending physician?*

Yes. A nurse practitioner may act as a hospice patient's attending physician pursuant to a recent change in the definition of "attending physician" under the Medicare regulations.<sup>1</sup> However, CMS has made clear that nurse practitioners may only serve in this capacity if applicable state law authorizes nurse practitioners to perform such duties. To determine whether state law permits nurse practitioners to take on these responsibilities, hospices should review their state statutes and regulations governing both hospice licensure (i.e., is the definition of "attending physician" updated to include nurse practitioners or is it limited to doctors of medicine or osteopathy) and nurse licensure (i.e., does a nurse practitioner's scope of practice include the duties he or she will be performing as an attending physician and what, if any, physician supervision is required).

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<sup>1</sup> See 42 C.F.R. 418.3.

2. *If the nurse practitioner is employed or contracted by the hospice and state law permits the nurse practitioner to act as a hospice patient's attending physician, what are some other issues a hospice should consider?*

A. Billing Issues.

Hospices can only separately bill Medicare Part A for nurse practitioner services in limited circumstances. CMS released Transmittal 205, amending Chapter 11 of the Medicare Claims Processing Manual (Hospice Claims) to provide guidance to hospices on when they can bill for nurse practitioner services.<sup>2</sup>

In order to bill for nurse practitioner services, the hospice must either employ or establish an independent contractor relationship with the nurse practitioner. Once employed or under contract, a hospice may only separately bill for those direct patient care services that the nurse practitioner provides as the hospice patient's attending physician. Attending physician services provided by a nurse practitioner must: (i) be medically necessary; (ii) be included in the patient's plan of care; and (iii) be services that would have been performed by a physician in the absence of a nurse practitioner.

According to the Medicare Manual, payment for nurse practitioner services under these circumstances is made in the following manner:

- The hospice establishes a charge and bills the Medicare Part A fiscal intermediary for attending physician services performed by a nurse practitioner.

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<sup>2</sup> Available online at <http://www.cms.hhs.gov/transmittals/Downloads/R205CP.pdf> (last accessed July 6, 2006).

<sup>3</sup> CMS Manual System, Pub. 100-04, Medicare Claims Processing, Section 40.1.2.

<sup>4</sup> CMS Manual System, Pub. 100-02, Medicare Benefit Policy Manual, Ch. 9, Section 40.1.3b.

<sup>5</sup> CMS Manual System, Pub. 100-04, Medicare Claims Processing, Chapter 12, Section 120.1.

<sup>6</sup> See Palliative Care Resources to be posted on the NHPCO website at [www.nhpco.org](http://www.nhpco.org).

- The fiscal intermediary pays the hospice the lesser of the actual charge or 85% of the physician fee schedule for the service. This payment is in addition to the hospice per diem rate.

A hospice may not bill for nurse practitioner services that can be performed by a registered nurse in the absence of the nurse practitioner. These nursing services are already included in the hospice per diem rate.<sup>3</sup> In fact, the Medicare Manual clarifies that no separate payment may be made for nurse practitioner services that are performed outside the attending physician role.

B. Patient Choice.

Medicare hospice patients must be free to choose their attending physician. If a patient does not have a primary care provider prior to his or her terminal diagnosis, the hospice must ensure that the patient is given a choice of either a physician or a nurse practitioner to serve as his or her attending physician.<sup>4</sup>

C. Nursing Services vs. Attending Physician Services.

As discussed briefly above, a hospice may not separately bill Medicare for nurse practitioner services that would have been performed by a registered nurse in the absence of the nurse practitioner. It is important for hospices to distinguish between a nurse practitioner who is providing nursing services (e.g., filling the role of a registered nurse on the interdisciplinary team) versus a nurse practitioner who is performing attending physician services.

Section 40.1.1 of the Medicare Manual – Medicare Benefit Policy (Nursing Care) gives several examples of nursing services for which separate payment will not be made by Medicare, whether performed by a registered nurse or a nurse practitioner:

- *A patient with a terminal diagnosis of lung cancer complains of leg pain. In the absence of a nurse practitioner, a registered nurse would assess the patient.*

- *Assessment of pain and or symptoms for the determination for the need of medications, other treatments, continuous home care, general inpatient care, etc. In the absence of a nurse practitioner, a registered nurse would assess the patient.*
- *Administration of medications through intravenous (e.g. PICC, central, etc.), intrathecal or any other means. In the absence of a nurse practitioner, a registered nurse would administer the medication.*
- *Family counseling. In the absence of a nurse practitioner, a registered nurse, social worker or counselor would provide this service.*
- *Providing a home visit for assessment or provision of care to a patient who is not his/her patient. In the absence of the nurse practitioner the service would be provided by a registered or licensed nurse. Therefore the NP cannot bill separately for the service.*

D. Limitations on Nurse Practitioner Duties under the Medicare Hospice Benefit.

Although nurse practitioners may act as a hospice patient's attending physician under Medicare, they cannot take on other responsibilities that are given to the hospice medical director or a physician designee under the Medicare regulations. For example, a nurse practitioner may not serve as nor replace the medical director or physician designee on the interdisciplinary team. A nurse practitioner is also prohibited from certifying (or re-certifying) a terminal diagnosis or a six month prognosis. In the event that a hospice patient's attending physician is a nurse practitioner, the hospice medical director and/or the physician designee must certify or re-certify the terminal illness.

3. *May a nurse practitioner act as a "consulting physician" for a Medicare hospice patient?*

No. As mentioned previously, the only nurse practitioner services that may be separately billed under the Medicare Hospice Benefit are those performed as the attending physician.

4. *May a hospice permit a contracted physician to delegate his or her duties (e.g., "round" on patients in the hospice's inpatient facility) to a nurse practitioner that he or she employs?*

No. A hospice's contractual relationships with outside physicians should not allow the physician to assign his or her duties under the arrangement. The hospice must ensure that the professionals performing duties on behalf of the hospice meet the qualifications required under the Medicare hospice regulations pursuant to 42 C.F.R. 418.56(b)(6). It would be improper for a hospice to allow physicians to delegate their duties to a nurse practitioner they employ. As stated above, the hospice may employ or contract with nurse practitioners to perform the duties of an attending physician if permitted by state law. In such situations, the hospice should examine not only the state hospice licensure laws, but also the nurse practice act and any other relevant state laws.

5. *If state law allows a hospice to provide non-hospice palliative care services, can a hospice-employed or contracted nurse practitioner provide "physician services" through the non-hospice palliative care program?*

In general, Medicare allows nurse practitioners to bill Medicare directly for services they provide to Medicare beneficiaries so long as the nurse practitioner is authorized to provide such services under applicable state licensure laws.<sup>5</sup> Nurse practitioners are typically reimbursed for covered services at 85% of the Medicare physician fee schedule. Payment may be made to the nurse practitioner directly or to his or her employer or contractor. Careful attention must be given to state law issues governing scope of practice and physician supervision. Additionally, the hospice should be very vigilant in monitoring the appropriateness of its Medicare Part B billings.

Therefore, a hospice operating a non-hospice palliative care program could bill Medicare Part B for nurse practitioner services as long as the nurse practitioner is permitted to provide these services

under state law. Again, nurse practitioners must refer to their state nurse practice acts to determine what services a nurse practitioner may perform. Nurse practitioners should take care to provide only those services that fit within their scope of practice as prescribed by state law.<sup>6</sup>

## CONCLUSION

The federal requirements were expanded to allow patients being admitted to hospice to have a nurse practitioner serve as their attending physician, subject to certain limitations and state licensure laws. In response, many hospices have appropriately increased the role nurse practitioners play in their organizations. As more hospices implement non-hospice palliative care programs, utilization of nurse practitioners is likely to grow.

Reinhart Boerner Van Deuren's Hospice and Palliative Care Practice Group serves hospices across the country in a variety of areas, including: regulatory compliance; survey and certification; accreditation; licensing; HIPAA; caregiver misconduct investigations; due diligence, mergers and acquisitions and other corporate matters; labor and employment; criminal and civil investigations by state or federal government agencies; litigation; contracts and daily operational issues.



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