

## Nurse Practitioners as Attending Physicians

In its publication *Medlearn Matters*, CMS provided guidance to hospices regarding utilization of nurse practitioners as "attending physicians." Section 408 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), amended the Social Security Act to include nurse practitioners in the definition of an attending physician for those beneficiaries who have elected the Medicare hospice benefit. Therefore, beginning December 8, 2003, Medicare pays for services provided by a nurse practitioner to those Medicare beneficiaries who have elected the hospice benefit and who have elected the nurse practitioner as the patient's attending physician. The law, however, does not allow the nurse practitioner who is acting as attending to certify the terminal illness and the six month prognosis. Many questions have arisen with regard to this provision and how it relates to nurse practitioners employed by the hospice. CMS may issue further clarification, and in the meantime, the following is intended to provide general information regarding a few select issues. As always, hospices are encouraged to contact their RHHI or legal counsel regarding specific legal interpretations. The Nurse Practice Act in each state will need to be consulted.

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- 1. The nurse practitioner works for a physician in the community. May the nurse practitioner and the physician both be designated as the attending and bill alternately? While the statute allows a nurse practitioner to be designated as the attending physician for purposes other than certification and recertification of six-month prognosis, only one person may be designated as the attending. RHHIs should be consulted regarding substitution of the attending.*
- 2. May a nurse practitioner act as a hospice "consulting physician?" The new provision applies to attending physicians, not to consulting physicians or medical directors. It would appear that a nurse practitioner could bill in the limited circumstances in which the care is unrelated to the terminal illness, assuming the scope of practice in the state permits it.*
- 3. How does the hospice handle billing for its nurse practitioner employees? Is it permissible for a nurse practitioner employee to act as the attending physician? According to *Medlearn Matters*, "Hospice agencies will bill their Regional Home Health Intermediary ("RHHI") for attending physician services performed by a nurse practitioner employed by or under contract to the hospice agency." It appears that what will be most important for hospices employing nurse practitioners is to distinguish between the role of the nurse practitioner who*

*may be fulfilling the RN role on the IDT from the nurse practitioner role as "attending physician." The CMS Manual, Pub. 100-02, Section 40.1.3b Nurse Practitioners as Attending Physicians (Rev. 15, 06-15-04) states in relevant part:*

If a beneficiary does not have an attending physician or a nurse practitioner who has provided primary care prior to or at the time of the terminal diagnosis, the beneficiary may choose to be served by either a physician or a nurse practitioner who is employed by the hospice. The beneficiary must be provided with a choice of a physician or a nurse practitioner.

Services provided by a nurse practitioner that are medical in nature must be reasonable and necessary, be included in the plan of care and must be services that, in the absence of a nurse practitioner, would be performed by a physician. If the services performed by a nurse practitioner are such that a registered nurse could perform them in the absence of a physician, that are not considered attending physician services and are not separately billable. Services that are duplicative of what the hospice nurse would provide are not separately billable.

Nurse practitioners cannot certify a terminal diagnosis or the prognosis of six months or less, if the illness or disease runs its normal course, or re-certify terminal diagnosis or prognosis. In the event that a beneficiary's attending physician is a nurse practitioner the hospice medical director and/or physician designee may certify or re-certify the terminal illness.

Section 40.1.1 of the CMS Manual, 40.1.1 - Nursing Care, gives several key examples of nursing services for which separate payment is not made, whether performed by an RN 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 visits 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.

Hospices employing nurse practitioners who act as attending physicians should be particularly careful in reviewing the CMS Manual and in establishing their billing procedures.

If state law permits a nurse practitioner to perform the functions necessary for a hospice attending physician, and the patient chooses the hospice employed nurse practitioner as his or her attending physician, the nurse practitioner employee may indeed be the "attending physician." However, it is important to remember that the patient always has the choice regarding the attending physician. The hospice patient has the right to choose among physicians in the community as opposed to a hospice employee, and to choose between a physician and a nurse practitioner. These choices apply regardless of whether the practitioners are employees or non-employees of the hospice.

For specific billing information, hospices are, as always, encouraged to contact their RHHs.

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