American Association
of Colleges of Nursing

January 17, 2020

Submitted via PatientsOverPaperwork@cms.hhs.gov

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: Feedback on Scope of Practice
P.O. Box 8013
Baltimore, MD 21244-1850

RE: Request for Feedback on Scope of Practice

The American Association of Colleges of Nursing (AACN) offers the following comments in response to the request for feedback on scope of practice as CMS works to implement President Trump's Executive Order (EO) #13890 on *Protecting and Improving Medicare for Our Nation's Seniors*.

As the national voice for baccalaureate and graduate nursing education, AACN has a vested interest in improving health and health care throughout the nation. For more than five decades, AACN has established quality standards for professional nursing education to ensure that Registered Nurses (RN) and Advanced Practice Registered Nurses (APRNs) –. which include Nurse Practitioners (NPs), Certified Nurse-Midwives (CNMs), Certified Registered Nurse Anesthetists (CRNAs), and Clinical Nurse Specialists (CNSs) – are prepared to provide evidence-based and cost-effective care. Within AACN member schools, more than 100,000 nursing students are currently enrolled in APRN programs and will serve as our nation's next generation of expert providers.[1]

As AACN works to help advance federal policies eliminating regulations detrimental to healthcare delivery by impeding the scope of practice of highly qualified clinicians, AACN appreciates the opportunity to provide comment on recommendations included in Sec. 5. *Enabling Providers to Spend More Time with Patients.* The EO directs the U.S. Department of Health and Human Services (HHS) to propose several changes to the Medicare program, including ones that eliminate supervision and licensure requirements of the Medicare program that are more stringent than other applicable federal or state laws. These burdensome requirements ultimately limit healthcare professionals, including APRNs, from practicing at the top of their professional license. The following comments are in direct response to recommended reforms included in Sec. 5.

Response to Sec. 5(a): Remove Barriers for NPs in Home Health Care and End of Life Care
CMS should remove the outdated and unnecessary requirement that NPs must locate a physician to document that a face-to-face patient assessment for home health services has occurred and certify or recertify the home health plan of care. NPs are primary care providers in the Home Health Care Program, and yet, they are unable to initiate or make necessary modifications to medication or

[1] *2018-2019 Enrollments and Graduations in Baccalaureate and Graduate Programs in Nursing*. Washington, DC: American Association of Colleges of Nursing.

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treatment without obtaining a physician's signature. AACN recommends allowing NPs to certify and recertify their patients' need for home health care. Delays in care are entirely problematic for home health care patients who suffer from more chronic conditions and report more limitations on activities of daily living.[2] Furthermore, CMS should allow NPs to certify that patients are terminally ill and in need of hospice care and ensure that NPs can refer their patients for medical nutrition therapy. The redundant structure whereby multiple providers are billing for repetitive services increases costs for taxpayers and patients.

Response to Sec. 5(a): Remove Barriers to Care for Medicare Constituents
According to the March 2019 Medicare Payment Advisory Commission (MedPAC) report, which utilizes and highlights Fee for Service (FFS) claims data for years 2015 to 2017, the number of primary care physicians billing Medicare grew by one percent. Comparatively, the number of APRNs and PAs billing Medicare grew by 10 percent.

It is noteworthy that the large majority of NPs certified in primary care (86.6 percent) see Medicare and Medicaid patients. NPs complete more than one billion patient visits annually. The current barriers facing NPs today require that CMS act. CMS can revise Medicare facility conditions of participation to authorize NPs to practice to the full extent of their education and clinical training in all settings. This includes updating the skilled nursing facility conditions of participation to authorize NPs to admit patients and perform the admitting assessment and all required monthly/bimonthly patient assessments. A perfect example of redundant structure where multiple providers are billing for repetitive services (which increases costs for taxpayers) is the Documentations section of treatment for the beneficiary's systemic diabetes condition (LCD L33369):

> *The supplier must obtain a signed statement from the physician who is managing the beneficiary's systemic diabetes condition (i.e., the certifying physician) specifying that the beneficiary has diabetes mellitus, has one of conditions 2a-2f listed in the related Policy Article, is being treated under a comprehensive plan of care for his/her diabetes, and needs diabetic shoes. The certifying physician must be an M.D. or D.O and may not be a podiatrist, physician assistant, nurse practitioner, or clinical nurse specialist.*

The fact that only a physician MD or DO may certify a patient's need for diabetic shoes when the patient is being cared for by an APRN or PA is disgraceful. NPs should be permitted to certify their patients' need for therapeutic shoes for comprehensive treatment of their diabetes. Although Congress passed H.R. 3911 as part of the Balanced Budget Act of 2018 allowing NPs and PAs to supervise cardiac and pulmonary rehabilitation in 2024, this arbitrary timeline needs to be accelerated to have direct impact on the Medicare patients being seen today. The ability of the NPs and PAs to order as well as supervise their Medicare patients is undeniably aligned with Section 5(a).[3]

Response to Sec. 5(b, c): Correct Provider Attestation and Remove "Incident-to" Billing
In its June 2019 report to Congress, MedPAC recommends requiring APRNs and PAs to bill directly for services provided, thus eliminating "incident-to" billing. In addition, MedPAC recommends that

[2] Avalere Health. (September 2018). Home Health Chartbook 2018: Prepared for the Alliance for Home Health Quality and Innovation. Retrieved from http://ahhqi.org/images/uploads/AHHQI_2018_Chartbook_09.21.2018.pdf
[3] CERT DME MAC Outreach & Education Task Force. (May 3, 2016). FAQ – Therapeutic Shoes for Persons with Diabetes. Retrieved from https://www.cgsmedicare.com/jc/mr/pdf/faq_tsd.pdf

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the Secretary redefine specialty designations for APRNs and PAs to give Medicare a greater account of the services provided by these clinicians, thus giving Congress greater ability to target resources toward primary care.[4] A unique virtual group participant identifier, such as a Tax Identification Number (TIN) or National Provider Identifier (NPI), would lead to administrative simplification and more accurate attestation of Merit-based Incentive Payment System (MIPS)-eligible providers caring for patients.

Recognizing provider attestation ensures that team and value-based care is maximized. Thus, AACN recommends removing "incident-to" billing. This would not only reduce barriers to beneficiaries' access to care, but also enable cost-effective solutions to improve coding and documentation requirements for Medicare and Medicaid payment. This is aligned with Section 5(b, c) of the Executive Order to end reimbursement disparities and ensure that NPs are appropriately reimbursed based on the work performed rather than their occupation.

Recommendation: Adopt Provider-Neutral Language

AACN requests use of provider-neutral language in all regulatory rulemaking where appropriate. The December 2018 HHS report *Reforming America's Healthcare System through Choice and Competition* and the Medicare Access and CHIP Reauthorization Act (MACRA) (H.R. 2, Pub. L. 114-10) both defined MIPS-eligible professionals to include physicians, PAs, NPs, CNSs, and CRNAs.[5,6] This is a proactive approach to future regulatory rulemaking, which will enhance CMS's ability to implement the administration's policies.

Thank you for considering these comments in response to the Executive Order (EO) #13890 on *Protecting and Improving Medicare for Our Nation's Seniors*. AACN looks forward to continuing to support CMS in its initiatives to reduce unnecessary regulatory burdens, increase access to affordable and high-quality care, and eliminate regulations impeding scope of practice of highly qualified clinicians.

Please consider AACN a resource in this process. If our organization can be of any assistance, please contact AACN's Director of Policy, Dr. Colleen Leners at cleners@aacnnursing.org.

Sincerely,

Deborah E. Trautman

Deborah E. Trautman, PhD, RN, FAAN
President and Chief Executive Officer

[4] Medicare Payment Advisory Commission. (June 14, 2019). Report to Congress: Medicare and the Health Care Delivery System. Retrieved from http://www.medpac.gov/docs/default-source/reports/jun19_medpac_reporttocongress_sec.pdf?sfvrsn=0
[5] U.S. Department of Health and Human Services, U.S. Department of the Treasury, and U.S. Department of Labor. (December 3, 2018). Reforming America's Healthcare System Through Choice and Competition. Retrieved from https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf
[6] Medicare Access and CHIP Reauthorization Act of 2015, Pub. L. 114-10, 129 Stat. 128.