August 12, 2019

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-6082-NC
7500 Security Boulevard
Baltimore, MD  21244

RE: CMS-6082-NC – Request for Information; Reducing Administrative Burden to Put Patients Over Paperwork
(Submitted electronically via www.regulations.gov)

Dear Administrator Verma:

The American Academy of Nursing (Academy) is pleased to offer the following comments in response to the June 11, 2019, request for information (CMS-6082-NC; 84 Fed. Reg. 112; pp. 27070-27072) “Reducing Administrative Burden to Put Patients Over Paperwork.” The Academy is grateful to the Centers for Medicare and Medicaid Services (CMS) for its efforts to ensure that registered nurses (RNs) and advanced practice registered nurses (APRNs) are fully recognized and reflected in the practice and payment policies of federal health programs, consistent with the laws of the states in which they are licensed. As the agency considers policies to improve efficiency, transparency, and to eliminate burdensome regulations, we believe CMS should clearly reaffirm its commitment to ensure full patient access to the services of RNs and APRNs and to ensure that nurses are recognized and included in any payment models as full partners in their design, administration and care delivery.

The Academy serves the public and the nursing profession by advancing health policy and practice through the generation, synthesis and dissemination of nursing knowledge. It’s more than 2,600 fellows are nursing’s most accomplished leaders in education, management, practice, research, and policy. They have been recognized for their extraordinary contributions to the promotion of the public’s health through evidence and innovation.

While the Academy acknowledges and is appreciative of the agency’s efforts to reduce regulatory burdens for nurses and other practitioners who are not physicians, we know that significant federal policy barriers to nursing practice continue to exist. As you seek public comments on ways to further reduce unnecessary administrative burdens, the Academy offers the following recommendations to address some of the barriers facing the nursing profession. These include:

- Remove credentialing and privileging barriers to practice and care,
- Remove costly and unnecessary physician supervision requirements,
- Address incident-to billing and acknowledge the licensure of the rendering provider,
• Reduce data entry and documentation burdens in health information technology and electronic health records
• Provide equity in reimbursement in educational settings for APRNs.

Remove Credentialing and Privileging Barriers to Practice and Care

The Academy appreciates the agency’s ongoing efforts to enhance Medicare Part B services and payment opportunities for RNs and APRNs. We continue to believe that beneficiaries should have full access to all RN and APRN roles to improve the availability of cost-effective, patient-centered care, consistent with the 2010 Institute of Medicine (now the Health and Medicine Division of the National Academy of Medicine) report, “The Future of Nursing: Leading Change, Advancing Health,” which called for the elimination of regulatory barriers that prevent APRNs from practicing to their full scope. Important steps toward that goal have been taken at both federal and state levels, but barriers to full practice authority still remain.

As CMS continues to identify unnecessary regulatory burdens, the Academy urges you to examine credentialing and privileging requirements, such as 42 C.F.R. § 482.22 – Condition of participation: Medical staff, and 42 C.F.R. § 482.1(a)(5) – Basis and Scope, which hinder the ability of APRNs to deliver services otherwise permitted under state law. We believe that hospital medical staff should be representative of all types of health professionals who require clinical privileges to practice, including APRNs as authorized by state law. Equitable representation of health professionals on hospital staffs will benefit patients, including Medicare beneficiaries, as well as local communities. We further believe that each professional on a medical staff should have access to full clinical, admitting and voting privileges, and be able to serve on hospital committees addressing care provided in the facility.

In place of the current burdensome and restrictive regulatory credentialing and privileging policies, we urge the agency to consider:

• Requiring that hospital staffs include APRNs.
• Eliminating lists of providers who may have membership or participate in leadership on the medical staff, instead making those roles available to the health care professionals most qualified and appropriate to fill them.
• Requiring uniform procedures for the consideration of applications for credentials including prompt (60-day) determinations.

Remove Costly and Unnecessary Physician Supervision Requirements

We recommend that the Medicare agency eliminate requirements for physician supervision of APRNs. Given the growing population of persons in the United States requiring healthcare, particularly among Medicare eligible populations, physician supervision requirements inhibit the ability of the vast APRN workforce to provide care for these patients. 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 access to healthcare. APRNs must hold their own license in each state; therefore, their practice is regulated and does not
require additional supervision. On the contrary, ample evidence points to the value and additional access to care provided by APRNs.

Our request corresponds with a recommendation from the 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. The NAM report specifically recommends that, “advanced practice registered nurses should be able to practice to the full extent of their education and training.” The Academy firmly supports this recommendation and has cited the Future of Nursing report in numerous previous comments.

Address Incident-to Billing and to Acknowledge the Licensure of the Rendering Provider

The Academy is concerned by what we believe is an anticompetitive policy that is contrary to the agency’s goal of improving transparency and is inconsistent with CMS’s efforts to improve quality by holding providers accountable for the care they deliver to patients. The practice of physician “incident to” billing of services furnished by APRNs is incompatible with a merit-based payment structure that focuses on the quality and value of the services provided to beneficiaries. We believe it is essential for consumers, payers, overseers of program integrity, and policy makers to have clear and accurate information to assess providers’ performance. “Incident to” billing of services directly contradicts those objectives, obscuring the provider who is actually accountable for services delivered to patients. As a result of these practices, the inability to identify the clinician who provides the care is an obstacle to accurately measuring the quality of care and assessing the value of innovative practice models.

Recently, members of the Medicare Payment Advisory Commission (MedPAC) also recognized the inherent problems with “incident to” billing. Most recently, in its June 2019 report to Congress, the commission unanimously recommended that Congress eliminate “incident to” billing. The commission recognized the same inequities and confusion that nursing organizations, along with other policy experts, have emphasized. The commission’s report acknowledges the cost savings to the health care system and the greater transparency that will be achieved by doing away with this practice.

While repealing “incident to” would require action by Congress, CMS could take steps to address current problems: in its August 2009 report, “Prevalence and Qualifications of Nonphysicians Who Performed Medicare Physician Services” (OEI-09-06-00430), the HHS Office of Inspector General recommended that CMS “require physicians who bill services to Medicare that they do not personally perform to identify the services on their Medicare claims by using a service code modifier.” The Inspector General noted that requiring use of a modifier would allow CMS to monitor claims to ensure that physicians or other qualified providers are billing for services performed by providers with appropriate qualifications. In the absence of congressional action on the MedPAC recommendation, a minimum step to gain a better understanding of the extent and nature of the practice and its interaction with other payment reforms would be to revise current claims requirements to ensure that the actual rendering provider is clearly identified on every claim – a small added step to a provider transaction that is already required.

Finally, we believe CMS should recognize and acknowledge the inherent anticompetitive effects of “incident-to” billing. The current disparity in Medicare payment to physicians and to APRNs when they
provide the same service creates a highly questionable economic incentive that influences professional practice and patient care, at additional unnecessary cost to the government. Based on licensure and without regard to outcomes of care, this payment structure violates a basic principle of value-based payment – that a single payment is based on a specific service, not the clinician who provides the service. We urge CMS to work with the Academy, other nursing organizations, and members of Congress to revise current law to eliminate this inappropriate, indefensible disparity.

**Reduce data entry and documentation burdens in health information technology and electronic health records**

In our comments to the Office of the National Coordinator (ONC) for Health Information Technology (IT) responding to the November 28, 2018 “Draft Strategy on Reducing Burden Relating to the Use of Health IT and EHRs,” the Academy noted the well-documented impact that electronic health records (EHRs) have had on clinician’s workflow – with nurses, physicians, and residents spending as much as half their time completing clinical documentation. We commended the strategies recommended by the ONC to “continue reducing overall regulatory burden around documentation of patient requirements” and to “leverage data already present in the EHR to reduce re-documentation in the clinical note.” We continue to believe that improving health IT and EHRs is an important aspect of reducing unnecessary regulatory and administrative burdens.

The Academy also supported recommendations to increase the intuitiveness of health IT systems by using human factor engineering to help reduce redundancies, as well as addressing the disconnect between traditional paper-based data recording and the inputting of that data into health IT systems. We encouraged the standardizing of medication information, order entry, and results display conventions within health IT systems to lower confusion and increase patient safety. We also pointed out the strategy’s excessive focus on physician workflow examples, failing to capture important aspects of the work of the entire interprofessional care team. We continue to urge the agency to broaden its perspective and to use the term “health care provider,” rather than “physicians and other health care professionals,” to more equitably encompass the interprofessional nature of the care team.

**Promote Equity in Reimbursement in Educational Settings for APRNs**

In a similar vein, the Academy urges CMS to take steps to promote equitable reimbursement for RNs and APRNs in educational settings. Current Medicare statutes, rules, and guidelines are silent on whether APRNs can be reimbursed for time spent supervising and instructing medical residents and interns. Special payment rules authorized under section 1861(b) of the Social Security Act (42 U.S.C. 1395x(b)) only detail how physicians can be reimbursed for time spent supervising and instructing residents and interns in teaching facilities. We urge CMS to revise its payment rules to include APRNs as resident teachers so that they may appropriately document and reimburse for billable services.

Additionally, we encourage CMS to adopt equitable policies for teaching physicians and APRN clinical preceptors. In 2018, the agency implemented a change allowing medical students to document services in a medical record where upon the teaching physician verifies all student documentation in the medical record rather than re-documenting the work. However, it didn’t apply the same policy to other
members of the care team, including APRN preceptors. The inequitable policy had the unintended consequence of increasing the disparity between documentation standards required for teaching physicians and APRN preceptors. We are pleased to see that CMS, in the “CY 2020 Revisions to Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies” (CMS-1715-P) released for public inspection November 29, 2019, has proposed policies to address this inequity in documentation requirements.

In summary, the Academy appreciates your efforts to address the significant burdens and barriers in current regulations that impede the efficiency, transparency and effective operation of Medicare, Medicaid, and private health care markets. We encourage you to think broadly about what constitutes those barriers and how they affect the efficient delivery of patient care, beyond outdated, traditional medical models and hierarchies. We believe that nurses and advanced practice registered nurses can make important contributions to creating a more patient-centered, cost-effective system. We are eager to work with you to identify and implement policies that will reduce unnecessary regulatory burdens and improve the care provided and managed by nurses. Thank you again for the opportunity to provide our comments and recommendations, and I hope you will contact us for assistance in any efforts to address these issues or policies. Please contact the Academy’s Strategic Outreach Manager, Ellie Cook, at ecook@aannet.org if you have any questions or need additional information.

Sincerely,

Suzanne Miyamoto, PhD, RN, FAAN
Chief Executive Officer
American Academy of Nursing