Program Memorandum Intermediaries

Department of Health & Human Services (DHHS)
Centers for Medicare & Medicaid Services (CMS)

Transmittal A-03-053 **Date: JUNE 20, 2003**

CHANGE REQUEST 2750

SUBJECT: Nurse Practitioner Services Under Medicare Hospice

Purpose

The purpose of this Program Memorandum (PM) is to clarify the policy and interpretation for services provided by nurse practitioners (NP) under the Medicare hospice benefit. Since hospice is a Medicare Part A benefit, this PM does not apply to Part B.

Introduction

We have received numerous questions regarding the role of an NP in the provision of services to beneficiaries who have elected the hospice benefit. Numerous Medicare statutory and regulatory provisions affect the determination of services that may or may not be provided by an NP. These provisions are described in the following sections.

Physicians

The law is explicit as to the role of a physician in Medicare's hospice benefit. §1861(r)(1) of the Social Security Act (Act) defines the term physician as "… a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state in which he performs such function or action…" Section 1861(dd)(3)(B) of the Act defines the attending physician as the physician (as defined in subsection (r)(1) … "whom the individual identifies as having the most significant role in the determination and delivery of medical care to the individual…"

Nurse Practitioner

The law is explicit as to the role of the NP in Medicare. Nurse practitioners are identified in §1861(s)(K)(i) of the Act which stipulates, "… services which would be physicians' services if furnished by a physician (as defined in subsection (r)(l) and which are performed by a nurse practitioner …(as defined in subsection (aa)(5) working in collaboration (as defined in subsection (aa)(6) with a physician (as defined in subsection (r)(l), which the nurse practitioner … is legally authorized to perform by the State in which the services are performed and such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services…" Section 1861(aa)(5)(A) of the Act defines the nurse practitioner as "…an individual who is legally authorized to perform (in the State in which they perform such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education and experience requirements (or any combination thereof) as …prescribed in regulation." Section 1861(aa)(6) defines collaboration as "… a process in which an NP works with a physician to deliver healthcare services within the scope of the practitioner's professional expertise, with medical direction and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as defined by the law of the State in which the services are performed."

Medicare regulations are implicit as to the role of an NP in the Medicare hospice benefit since the only references made are to registered nurses. No explicit references are made to nurse practitioners. Section1861(dd)(2)(B) of the Act describes the interdisciplinary group as "… personnel which (i) includes at least (II) one registered professional nurse…" 42 CFR 418 delineates and describes nursing care however, it is silent to the advanced practice role.

Sections 4511 and 4512 of the Balanced Budget Act (BBA) of 1997 removed the restrictions on the type of areas and settings in which Medicare pays for the professional services of the NPs. Payments are allowed for services furnished by NPs in all areas and settings permitted under applicable state licensure laws, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such professional services.

Plan of Care (POC)
Medicare regulation explicitly requires a physician to perform certain services, such as establishing the POC and its periodic review as defined in §1861(dd) of the Act. A physician is defined in §1861(r)(l) as a doctor of medicine or osteopathy. Section 1861(dd)(l) further delineates that items and services that are provided for beneficiaries under the hospice benefit must be " … under a written plan (for providing such care to an individual) established and periodically reviewed by the individual's attending physician and by the medical director (and by the interdisciplinary group described in paragraph (2)(B)." Federal Regulations at 42 CFR 418.58 indicate that the POC must be established and updated by the attending physician, the medical director or physician designee and the interdisciplinary group (IDG). 42 CFR 418.68(a) stipulates that the IDG be comprised of at least a physician, a registered nurse, a social worker, and a pastoral or other counselor.

Conclusion

Since Medicare regulations do not specifically provide that only a physician may write orders for beneficiaries electing the Medicare hospice benefit, if State law permits NPs to see, treat and write orders for patients, and if they are employed by a hospice agency, they may perform these activities for beneficiaries electing the hospice benefit. In addition, there is nothing that precludes a hospice from employing an NP.

The services provided by the NP would include those recognized and accepted by the State in which the services are provided and which are not excluded by Federal regulation. In addition, the NP role and responsibilities would need to be defined in the beneficiary's plan of care.

Nurse practitioners may not certify or re-certify that a beneficiary has a terminal diagnosis with a prognosis of 6 months or less if the illness or disease runs its usual course. Nurse practitioners may not take the place of the physician on the IDG but can fill the role of the registered nurse.

The law allows for a separate Medicare Part B payment to be made for services of a beneficiary's attending physician if he or she is not an employee of or under contract to a hospice. Since NPs are not physicians pursuant to §1861(r) (1) they may not act as attending physicians.

Since the hospice benefit is a prospective payment system with an all-inclusive daily rate in exchange for the provision of requisite services, which includes nursing and some physician services payment methodology, separate billing for NP services would not be permitted under Medicare Part A.

Provider Education

Intermediaries must share the information in this PM with providers through a posting on their Web site within two weeks and publish this information in their next regularly scheduled bulletin.

The *effective date* for this PM is July 1, 2003.

The *implementation date* for this PM is July 1, 2003.

These instructions should be implemented within your current operating budget.

This PM may be discarded June 20, 2004.

If you have any questions, contact Terri Deutsch at 410-786-9462.