American Association
of Colleges of Nursing

August 30, 2017

The Honorable Patrick J. Tiberi
House Ways and Means Committee
Subcommittee on Health
1102 Longworth House Office Building
Washington, DC 20515

RE: Medicare Relief Red Tape Project

Dear Chairman Tiberi,

The American Association of Colleges of Nursing (AACN) offers the following comments on the Medicare Relief Red Tape Project. As the national voice for America's baccalaureate and graduate nursing education programs, AACN has a vested interest in improving health and health care. For decades, the association has established quality standards for professional nursing education to ensure the Registered Nurse (RN) and Advanced Practice Registered Nurse (APRN; including nurse practitioners, certified nurse-midwives, certified registered nurse anesthetists, and clinical nurse specialists) workforce is prepared to provide evidence-based, high-quality, and cost-effective care.

Outlined below are four barriers that inhibit the efficiency of the Medicare system. We appreciate your leadership to investigate these challenges and the opportunity to work with your colleagues on the subcommittee, and staff to address them.

1. **Membership on Medicare Administrative Contractor (MAC) Advisory Committees**

Burden: Sub-regulatory guidance

Short Description: Membership on MAC Advisory Committees

Summary: Currently, guidance states that physicians are the only healthcare providers that are allowed membership on MAC advisory committees. These committees play an essential role in the development of local coverage determinations (LCDs), which have a significant impact on the provision of services in the Medicare program and provider reimbursement. The current guidance excludes the valuable input of APRNs, which limits the ability of Centers for Medicare and Medicaid Services to garner all perspectives in LCDs and ultimately impact the quality of the Medicare program. MAC Advisory Committees should be comprised of APRNs and other healthcare providers in addition to physicians.

Related Statute/Regulation: Medicare Program Integrity Manual Ch. 13, Sec. 13.8.1.2 and Exhibit 3.11 Section 522 of the Benefits Improvement and Protection Act (BIPA) created the term "local[i] coverage determination" (LCD). An LCD is a decision by a Medicare administrative contractor (MAC) whether to cover a particular item or service on a MAC-wide basis in accordance with Section 1862(a)(1)(A) of the Social Security Act (i.e., a determination as to whether the item or service is reasonable and necessary).

Proposed Solution: Add "APRNs and other qualified professionals" after "physician" in the guidance determining the composition of MAC advisory committees.

2. **Accurate Provider Attestation**

Burden: Regulatory/Statutory

Short Description: Accurate Provider Attestation

Summary: Medicare billing guidelines related to "incident to" do not capture the full picture of the clinician who is providing the service if they are not billing under their own tax identification number (TIN) or national provider identifier (NPI). It is extremely important that the most precise data possible be obtained to document and evaluate providers and the services they deliver especially as we move towards quality, cost-effective, patient-centered models of care.

Related Statute/Regulation: Sec.1861.**[**42 U.S.C. 1395x**]** For purposes of this title (H)(i) services furnished pursuant to a contract under section 1876 to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(5)) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service.[ii]

Proposed Solution: Medicare billing guidelines related to "incident to" services could be removed by regulation or guidance to ensure that all practitioners who bill under their own TIN or NPI number are properly acknowledged for services rendered. The alternative to discontinuing "incident to billing" could be the creation of a unique modifier if the TIN or NPI were not sufficient to accomplish this attestation. This would lead to administrative simplification in the form of more accurate billing and claims data.

3. **Accountable Care Organization (ACO) Assignment**

Burden: Statutory

Short Description: ACO Assignment Improvement

Summary: Under the Affordable Care Act, beneficiary assignment in a Shared Savings ACO is linked to care provided by a primary care physician, even if the patient's primary care provider is an APRN. This means that while patients may see an APRN for their primary care under the current ACO structure, patients must visit a primary care physician at least once a year to be included in the Shared Savings Program. Therefore, especially in rural and underserved areas, this may result in patients and APRNs not being included in that program. We know that significant improvements in the quality and coordination of care could be achieved by authorizing networks of APRNs to participate in the ACO program.

Related Statute/Regulation: Statute: 42 U.S.C. 1395jjj(c); Regulations: 42 CFR 425.20, 42 CFR 425.400, 42 CFR 425.401, 42 CFR 425.402, 42 CFR 425.404, 42 CFR 425.612

Proposed Solution: Amend the Medicare Shared Savings Program (MSSP) statutes to allow the assignment of beneficiaries who are only treated by APRNs. There is current legislation

in the House (H.R. 1160). This would allow patients, whose provider is not a physician, to be eligible for a MSSP, ACO.

4. **Access to Home Health Services**

Burden: Statutory

Short Description: Improve Medicare Patient Access to Home Health Services

Summary: APRNs are valued providers of home health services and are authorized to perform face-to-face patient assessments, but they still need to locate a physician to document the face-to-face assessment as well as the patient's need for home health services. This is an unnecessary step that delays access to treatment and incurs increased costs to the Medicare program.

Related Statute/Regulation: Statutes: 42 U.S.C. 1395f (a); 42 U.S.C. 1395n(a); 42 U.S.C. 1395x(m); 42 U.S.C. 1395x(o)(2); 42 U.S.C. 1395fff
Regulations: 42 CFR 484; 42 CFR 424.22

Proposed Solution: Modernize the home health statutes to include APRNs in the class of clinicians who can document face-to-face assessments and certify a patient's need for home health services. There is current legislation in both the House and Senate (H.R. 1825 and S.445, respectively) that would address these issues.

Thank you for your consideration of these requests. Your call to reduce Medicare Red Tape is timely, essential, and critical to improving efficiency, safety, and innovation. Please consider AACN an ally in this endeavor. If our organization can be of any assistance, please contact AACN's Director of Government Affairs, Lauren Inouye at linouye@aacnnursing.org or AACN's Director of Policy, Colleen Leners at cleners@aacnnursing.org.

Sincerely,

Juliann G. Sebastian, PhD, RN, FAAN
AACN Board Chair

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

[i] Medicare program Integrity Manuel Chapter 15 Retrieved from https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/pim83c13.pdf

[ii] Social Security Act §1861 Retrieved from https://www.ssa.gov/OP_Home/ssact/title18/1861.htm#act-1861-s-2-k https://www.ssa.gov/OP_Home/ssact/title18/1861.htm#act-1861-s-2-k