

January 5, 2021

Colorado Department of Health Care Policy and Financing
Medical Services Board Office
1570 Grant Street
Denver, Colorado 80203,

Submitted via email: chris.sykes@state.co.us

RE: MSB 20-11-30-A, Revision to the Medical Assistance Act Rule concerning Home Health Providers, Section 8.520.1.N

To whom it may concern,

The American Association of Nurse Practitioners (AANP), with a membership of over 115,000 nurse practitioners (NPs), represents the interests of the more than 290,000 NPs in the United States. This includes the over 6,268 NPs practicing in Colorado, 1,304 of whom are AANP members. AANP welcomes the opportunity to provide comment on the notice of proposed changes to the Medical Assistance Act Rule concerning Home Health Providers. These changes propose to align Colorado's Medicaid regulations with section 3708 of the CARES Act which authorizes NPs and other clinicians to order and certify for home health services.

NPs are advanced practice registered nurses who are prepared at the masters or doctoral level to provide primary, acute, chronic and specialty care to patients of all ages and walks of life. Daily practice includes: assessment; ordering, performing, supervising and interpreting diagnostic and laboratory tests; making diagnoses; initiating and managing treatment including prescribing medication and non-pharmacologic treatments; coordinating care; counseling; and educating patients and their families and communities. NPs practice in nearly every health care setting including clinics, hospitals, Veterans Health Administration and Indian Health Services facilities, emergency rooms, urgent care sites, private physician or NP practices (both managed and owned by NPs), skilled nursing facilities (SNFs) and nursing facilities (NFs), schools, colleges and universities, retail clinics, public health departments, nurse managed clinics, homeless clinics, and home health. NPs hold prescriptive authority in all 50 states and the District of Columbia.

AANP appreciates that the Colorado Department of Health Care Policy and Financing Medical Services Board has made it a priority to update their home health regulations in order to implement section 3708 of the CARES Act. This new authority streamlines the home health care process and reduces the risk of costly complications resulting from delays in care. Delays are especially problematic for home health care patients who suffer from more chronic conditions and limitations on activities of daily living than the non-home health care beneficiary population.¹ Many of these patients are high risk for severe complications due to COVID-19 and it is imperative that they are able to receive health care at home without having to potentially expose themselves to the virus.

Updating the Colorado regulations pursuant to the recent changes made by section 3708 of the CARES Act would align the Colorado Medical Assistance rules with 42 CFR 440.70 and provide Colorado Medicaid patients with critical increased access to home health care services. We appreciate the proposed changes to section 8.520.1.N which would "add nurse practitioners, clinical nurse specialists, and physician assistants to the definition of 'ordering physician.'" We respectfully request that the term 'ordering physician' be changed to 'ordering practitioner'. Usage of this provider neutral language

¹http://ahhqi.org/images/uploads/AHHQI_2018_Chartbook_09.21.2018.pdf.

throughout home health regulations will ensure uniformity and reduce confusion for clinicians and their patients. This change would also be consistent with the language used by CMS when the agency updated the federal home health regulations.

Below are suggested changes to the proposed regulations to ensure alignment with the federal home health regulations and the authority granted under the CARES Act. Our recommended changes are in *red bold italic* text.

- **10 CO ADC 2505-10:8.520.1. Definitions**

- ❖ 8.520.1.N. Ordering ~~Physician~~ *Practitioner* means the client's primary care physician, nurse practitioner, clinical nurse specialist, physician assistant, or other physician specialist. For clients in a hospital or nursing facility, the Ordering ~~Physician~~ *Practitioner* is the appropriate qualified personnel responsible for writing discharge orders until such time as the client is discharged. This definition may include an alternate ~~physician practitioner~~ authorized by the Ordering ~~Physician~~ *Practitioner* to care for the client in the Ordering ~~Physician~~ *Practitioner*'s absence.

- **10 CO ADC 2505-10 2505-10:8.520.7. Documentation-**

- ❖ **8.520.7.D. Plan of Care Requirements**

- ❖ 2. The initial assessment or continuation of care assessments shall be completed by a registered nurse, or by a physical therapist, occupational therapist or speech therapist when no skilled nursing needs are required. The assessment shall be utilized to develop the Plan of Care with provider input and oversight. The written Plan of Care and associated documentation shall be used to complete the CMS-485 (or a document that is identical in content) and shall include:

- ❖ a. Identification of the ~~attending physician~~ *"ordering practitioner"*

- ❖ b. ~~Physician~~ *"ordering practitioner"* orders;

- ❖ d. The specific circumstances, client medical condition(s) or situation(s) that require services to be provided in the client's residence rather than in a ~~physician's~~ *"ordering practitioner's"* office, clinic or other outpatient setting including the availability of natural supports and the client's living situation;

- ❖ j. A notation regarding the client's ~~physician ordering practitioner~~-ordered dietary (nutritional) requirements and restrictions, any special considerations, other restrictions or nutritional supplements;

- ❖ k. The Home Health Agency shall indicate a comprehensive list of the amount, frequency, and expected duration of provider visits for each discipline ordered by the client's ~~physician~~ *"ordering practitioner"* including:

- ❖ n. The ~~attending physician~~ *"ordering practitioner"* shall approve the Plan of Care with a dated signature. If an electronic signature is used, the agency shall document that an electronic signature was used and shall keep a copy of the ~~physician's~~ *"ordering practitioner's"* physical signature on file;

- 3. A new Plan of Care shall be completed every 60 calendar days while the client is receiving Home Health Services. The Plan of Care shall include a statement of review by the ~~physician ordering practitioner~~ every 60 days.

- **2505-10:8.520.11. Denial, Termination, or Reduction in Services**

- ❖ 8.520.11.B. Termination of services to clients still medically eligible for Coverage of Medicaid Home Health Services:

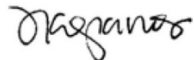
- ❖ 1. When a Home Health Agency decides to terminate services to a client who needs and wants continued Home Health Services, and who remains eligible for coverage of services under the Medicaid Home Health rules, the Home Health Agency shall give the client, or the client's designated representative/legal guardian, written advance notice of at least 30 business days. The ~~attending physician~~ *"ordering practitioner"* and the Department's Home Health Policy Specialist shall also be notified.

In conjunction with the changes made to home health regulations, CMS also amended the regulations regarding Medicaid equipment, supplies and appliances in 42 CFR 440.70. The agency expanded the list of ordering practitioners for durable medical equipment (DME), supplies and appliances to include clinicians authorized to order medical equipment, supplies and appliance under State law, which includes

NPs.² We recommend Colorado also amend “2505-10:8.590. DURABLE MEDICAL EQUIPMENT AND DISPOSABLE MEDICAL SUPPLIES” in accordance with these changes. This will maintain consistency with the updates made in 42 CFR 440.70 and section 3708 of the CARES Act. These changes will also ensure better access to medically necessary DME and medical supplies for Medicaid patients.

We thank you for the opportunity to comment on these changes proposed by the Colorado Department of Health Care Policy and Financing Medical Services board. We again express our appreciation for making increased access to home health care services a priority. These proposed regulations will increase the ability of NPs and other clinicians to deliver high-quality, cost-effective health care and will improve access to these services for residents of Colorado. Should you have comments or questions, please direct them to Frank Harrington, Director of Reimbursement and Regulatory Affairs, fharrington@aanp.org, (571) 777-8454.

Sincerely,



Tay Kopanos, DNP, NP
VP of State Government Affairs

² 85 FR 27626, May 8, 2020.