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CMS Revises Interpretive Guidelines For Anesthesia Services in Hospitals

CLIENT ADVISORY

On December 11, 2009, the Centers for Medicare and Medicaid Services (“CMS”) released revised Interpretive Guidelines related to the Hospital Conditions of Participation (CoP) governing Anesthesia Services (42 CFR 482.52).¹ The revised guidance became effective immediately adding a significant amount of new language to the old guidelines. In summary, the revised language addresses the following issues:

- Types of Anesthesia Services: The revised guidance provides definitions of the various types of anesthesia related services (i.e. general anesthesia, regional anesthesia, monitored anesthesia, topical/local anesthesia, minimal sedation, moderate sedation) and indicates whether they involve the administration of “anesthesia”.
- Administration/Supervision Requirements: The revisions provide additional guidance regarding who may administer anesthesia and the supervision requirements of non-physician personnel, specifically Certified Registered Nurse Anesthetists (“CRNAs”).
- Pre and Post anesthesia evaluations: The revisions refine the interpretive guidelines by explaining the requirements for pre and post anesthesia evaluations.
- Intra-operative Reports: The guidance indicates the minimum

elements required under the current standard of care for an anesthesia intra-operative report or record.

I. Types of Anesthesia Services

The Hospital Conditions of Participation for Anesthesia Services provide that if a hospital furnishes anesthesia services, the services must be provided in a well-organized manner under the direction of a qualified doctor of medicine (M.D.) or osteopathy (D.O.). The Interpretive Guidelines clarify that a hospital is not required to provide anesthesia services, but that if it does, the hospital must comply with all the relevant Hospital CoP requirements.

New language added in the revised guidelines defines and provides examples of the various types of anesthesia services, which are grouped into two categories: 1) those that are subject to the anesthesia administration requirements (i.e. general anesthesia, regional anesthesia, monitored anesthesia); and 2) those that are not (i.e. topical or local anesthesia, minimal sedation, moderate sedation/analgesia “conscious sedation”).² Further the new guidelines instruct that the hospital’s anesthesia service is responsible for developing policies and procedures governing the provision of all

¹ Hospital providers who offer anesthesia services must comply with this regulation as a condition of participation in the Medicare and Medicaid programs. Although not law, the interpretive guidelines provide surveyors with a framework by which to consistently evaluate a hospital’s compliance with the Hospital CoP for anesthesia services. The interpretive guidelines are contained in the CMS State Operations Manual, Appendix A. An advance copy of the revised Interpretive Guidelines for Anesthesia Services is attached to CMS Survey and Certification Group Memorandum S&C-10-09-Hospital.

² The definitions are generally based on those provided by the American Society of Anesthesiologists.



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categories of anesthesia services including the minimum qualifications for each category of practitioner who is permitted to provide anesthesia.

II. Anesthesia Administration/Supervision Requirements

The Hospital CoP specifies that anesthesia must only be administered by: a qualified anesthesiologist; an MD or DO; a dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under state law; a properly supervised CRNA; or a properly supervised anesthesiologist assistant. According to the new guidance, the hospital's anesthesia services policies must address the circumstances under which non-anesthesiologist practitioners and non-physician practitioners are permitted to administer anesthesia in the hospital. These policies must comply with state law and conform to generally accepted standards of anesthesia care. The medical staff bylaws must include criteria for determining the anesthesia service privileges that may be granted to an individual practitioner and the type and complexity of procedures for which the individual practitioner may administer anesthesia. Whether supervision is required must also be specified in the privileges granted to the individual practitioner.

In the case of CRNAs, unless the CRNA is practicing in an opt-out State, he/she must be supervised when administering anesthesia.³ Since local anesthetics as well as minimal and moderate sedation are not considered anesthesia per se, they are not subject to the CRNA supervision requirements. A CRNA administering general, regional and monitored anesthesia must be supervised either by the operating

practitioner who is performing the procedure or by an anesthesiologist who is immediately available. The new guidance defines immediately available as "physically located within the same area as the CRNA, e.g., in the same operative suite, or in the same labor and delivery unit, or in the same procedure room, and not otherwise occupied in a way that prevents him/her from immediately conducting hands-on intervention, if needed." Further, the revised guidelines clarify that individual operating practitioners do not need to be granted specific privileges to supervise a CRNA, but that the medical staff bylaws must specify for each category of operating practitioner the type and complexity of procedures that category of practitioner may supervise.

III. Additional Clarifications

The updated Interpretive Guidelines further refine the requirements for pre and post anesthesia evaluations. Specifically, these evaluations must:

- Be performed whenever general, regional or monitored anesthesia is administered;
- Be completed only by practitioners who are qualified to administer anesthesia and may not be delegated to non-qualified professionals;
- Include evidence of adherence to general standards for anesthesia care;
- Be completed as specified in the CoP;
- In the case of the pre-anesthesia evaluation, be performed within 48 hours prior to surgery;⁴ and
- In the case of the post-anesthesia evaluation, be completed no later than 48 hours after surgery but only once the patient has recovered sufficiently from the anesthesia to appropriately participate in the assessment.⁵

³ States have the ability to opt-out of the general MD/DO supervision requirement for CRNAs. A list of States that have exercised their opt-out option, and which are exempt from the requirements for physician supervision of CRNAs under 42 CFR 482.52(a)(4), is available at http://www.cms.hhs.gov/CFCAndCoPPs/02_Spotlight.asp.

⁴ New language clarifies that the first dose of medication marks the end of the 48-hour timeframe.

⁵ New language provides additional guidance for calculating the 48-hour timeframe for post-anesthesia assessments.



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Finally, under the Hospital CoP, an intraoperative anesthesia record must be completed for each patient receiving anesthesia. While current practice dictates that patients receiving moderate sedation be monitored or evaluated before, during and after the procedure, the guidance clarifies that an intraoperative report is not required because moderate sedation does not constitute “anesthesia” for purposes of the Hospital CoP for Anesthesia Services. The revised guidance also provides the minimum elements required under the current standard of care for an anesthesia intraoperative report or record.

Hospitals should review their Anesthesia Services policies and procedures to ensure compliance with the revised guidance. Should you have questions about the revisions to the Anesthesia Services Interpretive

Guidelines you may contact Mary C. Malone or Michelle E. Calloway by telephone at 804.967.9604, or by email at mmalone@hdjn.com or mcalloway@hdjn.com. You may also contact other members of our Medicare and Medicaid Compliance and Reimbursement Team: Emily W.G. Towey at etowey@hdjn.com, Rachel Suddarth at rsuddarth@hdjn.com or Elizabeth Trende at etrende@hdjn.com for assistance with Medicare and Medicaid compliance and reimbursement issues. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

Richmond 4701 Cox Road Suite 400 Glen Allen, VA 23060 PO Box 72050 Richmond, VA 23255-2050 ☎ (804) 967-9604	Fairfax 3975 Fair Ridge Road Suite 475 South Fairfax, VA 22033 ☎ (703) 591-3440
Harrisonburg 3210 Peoples Drive Harrisonburg, VA 22801 ☎ (866) 967-9604	Virginia Beach One Columbus Center 283 Constitution Drive Suite 301 Virginia Beach, VA 23462 ☎ (757) 321-6555
Lewisburg, WV 210 West Randolph Street Lewisburg, WV 24901 ☎ (866) 967-9604	Franklin, TN 725 Cool Springs Blvd. Suite 600 Franklin, TN 37067 ☎ (866) 967-9604