

Issue Brief: [Medicare - Supervision] History in Brief – Information on Opt-Out

Medicare long required physician supervision of nurse anesthetists as a condition of hospital participation in the program. In the early 1990s, AANA asked the Medicare agency to repeal the requirement, citing an absence of evidence linking the requirement to quality. The agency proposed repeal in 1997, setting off a tidal wave of public comments into Medicare and triggering attention to supportive and oppositional legislation in Congress. The ASA backed a study in *Anesthesiology* claiming to link an absence of anesthesiologist involvement in cases to “excess deaths,” an assertion contested by AANA via Pine and ultimately by the Medicare agency itself in the preamble to its January 2001 final rule repealing supervision. President Clinton’s action on the eve of the inauguration of his successor allowed President George W. Bush, who suspended all final rules that had not yet taken effect, to suspend the effective date of the final rule repealing supervision. Rather than eliminating repeal, President Bush yielded a second final rule in November 2001 establishing a process by which states could opt-out of the requirement. To date, 17 states have opted-out, most in the West and upper Midwest, but most recently in California, Colorado and Kentucky.

The AANA continues seeking full federal repeal of supervision. The AANA secured publication of a landmark study in *Health Affairs* headlined “No Harm When CRNAs Provide Care Without Physician Supervision,” and participated in the development and distribution of an Institute of Medicine publication whose first recommendation was to permit advanced practice registered nurses to practice to the fullest extent of their education and skill.

Current State of the Issue

The Administration’s development of a regulatory reform agenda during the summer of 2011 acknowledged AANA’s advocacy for repealing supervision. In April 2013, in response to a proposed rule from CMS on reducing regulatory burden in the Medicare and Medicaid programs, the AANA urged the agency to reform the Medicare Conditions for Coverage (CfCs) and the Medicare Conditions of Participation (CoPs) to eliminate the costly and unnecessary requirement for physician supervision of CRNA anesthesia services. This would allow for states and healthcare facilities nationwide to make their own decisions about the delivery of healthcare based on state laws and patient needs, thereby controlling cost and ensuring access to quality care.

Furthermore, a 2012 study published in the journal *Anesthesiology*, the professional journal of the American Society of Anesthesiologists, showed that lapses in anesthesiologist supervision are common even when an anesthesiologist is medically directing as few as two CRNAs. The authors reviewed over 15,000 anesthesia records in one leading U.S. hospital, and found supervision lapses in 50 percent of the cases involving anesthesiologist supervision of two concurrent CRNA cases, and in more than 90 percent of cases involving anesthesiologist supervision of three concurrent CRNA cases. In addition, researchers studying anesthesia safety found no differences in care between nurse anesthetists and physician anesthesiologists based on an exhaustive analysis of research literature published in the United States and around the world, according to a scientific literature review prepared by the Cochrane Collaboration.

Moreover, the American Society of Anesthesiologists ASA Relative Value Guide 2013 newly suggests loosening further the requirements that anesthesiologists must meet to be “immediately available,” stating that it is “impossible to define a specific time or distance for physical proximity.” This new ASA Relative Value Guide definition marginalizes any relationship that the “supervisor” has with the patient and is inconsistent with the Medicare CoPs and CfCs, and with the Medicare interpretive guidelines for those conditions which require anesthesiologists claiming to fulfill the role of “supervising” CRNA services be physically present in the operating room or suite.

The supervision requirement drives surgeons concerned with unfounded vicarious liability for CRNA anesthesia services to seek anesthesiologists to either provide or supervise anesthesia care. This impetus

increases healthcare costs and reduces patient access to care though inefficient healthcare workforce utilization. The Medicare agency did not publish a proposed rule to repeal supervision in 2014.

Anticipated Future State

- With healthcare industry leaders focused on quality, access and cost of care, a drumbeat of support for supervision repeal continues.
- Opt-outs will continue to be promoted state-by-state by state associations of nurse anesthetists and of hospitals, and opposed by state anesthesiologist and medical societies.

For More Information

- AANA Letter on Reducing Regulatory Burden (2013):
http://www.aana.com/myaana/Advocacy/fedgovtaffairs/Documents/20130408%20AANA_Cmt-CoP-PropRule.pdf (requires AANA member login and password)
- Medicare hospital conditions of participation for anesthesia services
http://edocket.access.gpo.gov/cfr_2002/octqtr/42cfr482.52.htm and hospital manual including interpretive guidelines for anesthesia services at tag A-1001
https://www.cms.gov/manuals/Downloads/som107ap_a_hospitals.pdf
- History of establishment of opt-out process by Downey CRNA et al, from AANA Journal 2010 (requires AANA member login and password), 10
http://www.aana.com/newsandjournal/Documents/imagining_0410_p96-100.pdf
- Health Affairs paper on opt-outs and patient safety (2010) (requires AANA member login and password),
<http://www.aana.com/newsandjournal/News/Pages/080310-Study-in-Health-Affairs-Confirms-Quality-Safety-of-Nurse-Anesthetist-Care.aspx>
- Institute of Medicine “The Future of Nursing: Leading Change, Advancing Health” summary recommendations, <http://www.thefutureofnursing.org/recommendations>, and access to the full report by PDF <http://www.thefutureofnursing.org/IOM-Report>
- AANA monograph “Quality of Care in Anesthesia” summarizing evidence supporting CRNA practice and critiquing the Anesthesiology study mentioned above,
<http://www.aana.com/resources2/professionalpractice/Documents/Quality%20of%20Care%20in%20Anesthesia%2012102009.pdf> (requires AANA member login and password)
- Cochrane Anesthesia Groups Report “Physician anaesthetists versus non-physician providers of anaesthesia for surgical patients” (2014)
<http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD010357.pub2/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false>