



C. Scott Litch
Chief Operating Officer
and General Counsel

The 24-Hour History and Physical Examination Regulation and the Impact on Hospital Operating Room Cases

Recent federal regulations from the Centers for Medicare & Medicaid Services (CMS) should be noted for pediatric dentists and AAPD affiliate member general dentists treating children with extensive dental caries in the hospital operating room setting.

Background

CMS develops Conditions of Participation (CoPs) and Conditions for Coverage (CfCs) that health care organizations must meet in order to begin and continue participating in the Medicare and Medicaid programs. According to CMS, "These minimum health and safety standards are the foundation for improving quality and protecting the health and safety of beneficiaries." CMS also ensures that the standards of accrediting organizations recognized by CMS (through a process called "deeming") meet or exceed the Medicare standards set forth in the CoPs / CfCs. Therefore, CoPs and CfCs are the minimum health and safety standards that providers and suppliers must meet in order to be Medicare and Medicaid certified. CoPs and CfCs apply to many health care organizations, including ambulatory surgical centers, federally-qualified health centers, and hospitals. For more information, visit: www.cms.hhs.gov/CFCsAndCoPs/.

The regulations covering Conditions of Participation for Hospitals are located in 42 C.F.R. (Code of Federal Regulations) § 482.

Previous Regulation and Proposed Change

The regulation examined in this article relates to patient history and physical exams (referred to as "H&P"). The previous regulation required an H&P to be done within 7 days prior to a procedure or within 48 hours after admission.

In 2005, CMS issued a proposed regulation (based on a regulatory proposal that originated in 1997) that would require an H&P no more than 30 days before the procedure or within 24 hours after hospital admission. The rationale from CMS and a brief history of the issue is stated as follows (emphasis added in **bold**):

"The current medical history and physical examination requirement has been an ongoing focus and point of contention for the American Medical Association (AMA) and the American Podiatric Medical Association, Inc. (APMA). The current regulatory requirement states that a physical examination and medical history be done no more than 7 days before or 48 hours after an admission for each patient by a doctor of medicine or osteopathy, or, for patients admitted only for oromaxillofacial surgery, by an oromaxillofacial surgeon who has been granted such privileges by the medical staff in accordance with State law.

These professional groups continue to challenge the timeframe for completion of the medical history and physical examination, as well as who is permitted to complete the history and physical examination. Questions have intensified as a result of the JCAHO's revised standard that states a history and physical examination performed within 30 days before admission may be used in the patient's medical record, provided any changes in the patient's condition are documented in the medical record at the time of admission.

"We believe that expanding the current requirement for completion of a medical history

and physical examination from no more than 7 days before admission to within 30 days before admission supports safe patient care as long as the hospital ensures documentation of the patient's current condition in the medical record within 24 hours after admission."¹

Specifics on the New H&P CoP

CMS issued its final regulation on Nov. 27, 2006², with the following provisions:

"42 C.F.R. § 482.22 Condition of participation: Medical staff.

(c) Standard: Medical staff bylaws.

The medical staff must adopt and enforce bylaws to carry out its responsibilities. The bylaws must:

(5) Include a requirement that a medical history and physical examination be completed no more than 30 days before or 24 hours after admission for each patient by a physician (as defined in section 1861(r) of the Act), an oromaxillofacial surgeon, or other qualified individual in accordance with State law and hospital policy. The medical history and physical examination must be placed in the patient's medical record within 24 hours after admission. When the medical history and physical examination are completed within 30 days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed. This updated examination must be completed and documented in the patient's medical record within 24 hours after admission."³

Note that the term “physician” in section 1861(r) of the Social Security Act includes a dentist, defined as:

“ . . . a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions. . . .”

However while pediatric and general dentists are certainly trained to complete a patient medical history, it is not within the scope of their practice to perform a complete physical exam—whether for the 30 day pre-admission H&P or for the update required 24 hours after admission. Oral surgeons are trained to do H&Ps and are so noted in the regulation (albeit under the confusing term of “oromaxillofacial surgeons”), but of course are held to the same standard of care as MDs when performing them.

42 C.F.R. § 482.24 Condition of participation: Medical record services.

(c) Standard: Content of record. The medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient’s progress and response to medications and services.

(1) All patient medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures.

(i) All orders, including verbal orders, must be dated, timed, and authenticated promptly by the ordering practitioner, except as noted in paragraph (c)(1)(ii) of this section.

(ii) For the 5-year-period following Jan. 26, 2007, all orders, including verbal orders, must be dated, timed, and authenticated by the ordering practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.

(iii) All verbal orders must be authenticated based upon federal and state law. If there is no state law that designates a specific timeframe for the authentication of verbal orders, verbal orders must be authenticated within 48 hours.

(2) All records must document the following, as appropriate:

(i) Evidence of—

(A) A medical history and physical examination completed no more than 30 days before or 24 hours after admission. The medical history and physical examination must be placed in the patient’s medical record within 24 hours after admission.

(B) An updated medical-record-entry documenting an examination for any changes in the patient’s condition when the medical history and physical examination are completed within 30 days before admission. This updated examination must be completed and documented in the patient’s medical record within 24 hours after admission.⁴

Clarification for Outpatient Procedures

CMS also issued more recent regulations on this matter related to outpatient services.⁵ In terms of the CoP H&P requirements, CMS indicated that:

“Since this final rule became effective on Jan. 26, 2007, we have received a great number of comments and questions from providers about the timeframe requirements (for both the initial medical history and physical examination and its update) as well as about the postanesthesia evaluation requirements. In both areas, commenters have sought clarification on the application of these requirements for patients undergoing outpatient surgeries and procedures . . . According to the most recent data, 30 million surgical procedures are performed each year in the United States with over 60 percent done as outpatient procedures and another 10 to 15 percent performed on a same-day admission basis. These figures combined

translate to approximately 21 million surgical procedures performed each year in the U.S. on patients who are admitted to the hospital on the day of their procedure. A majority of these patients are also discharged from the hospital the same day that they are admitted . . .”⁶

CMS justified its regulation by stating that:

“Without a requirement that an updated examination be completed after admission and prior to surgery or other procedure, any changes in a patient’s condition would most likely be missed by hospital staff. Failing to identify changes in a patient’s condition prior to surgery may adversely impact not only the procedure but also consequently, and perhaps more significantly, the outcome of the procedure for the patient.”⁷

Hence, the prior H&P regulation from Nov. 27, 2006, was modified by CMS as follows:

“42 C.F.R. § 482.22 Condition of participation: Medical staff. (emphasis added in **bold**)

(c) . . .

(5) Include a requirement that—

(i) **A medical history and physical examination be completed and documented for each patient no more than 30 days before or 24 hours after admission or registration, but prior to surgery or a procedure requiring anesthesia services.** The medical history and physical examination must be completed and documented by a physician (as defined in section 1861(r) of the Act), an oromaxillofacial surgeon, or other qualified licensed individual in accordance with State law and hospital policy.

(ii) **An updated examination of the patient, including any changes in the patient’s condition, be completed and documented within 24 hours after admission or registration, but prior to surgery or a procedure**

requiring anesthesia services, when the medical history and physical examination are completed within 30 days before admission or registration.

The updated examination of the patient, including any changes in the patient's condition, must be completed and documented by a physician (as defined in section 1861(r) of the Act), an oromaxillofacial surgeon, or other qualified licensed individual in accordance with State law and hospital policy.⁸⁷

Clearly, this requires the H&P update to be completed, and documented, prior to the surgery or procedure.

The CoP for medical records and surgical services was modified as follows:

“42 C.F.R. § 482.24 Condition of participation: Medical record services.

(c) . . .

(2)

(i) Evidence of--

(A) A medical history and physical examination completed and documented no more than 30 days before or 24 hours after admission or registration, but prior to surgery or a procedure requiring anesthesia services. The medical history and physical examination must be placed in the patient's medical record within 24 hours after admission or registration, but prior to surgery or a procedure requiring anesthesia services.

(B) An updated examination of the patient, including any changes in the patient's condition, when the medical history and physical examination are completed within 30 days before admission or registration. Documentation of the updated examination must be placed in the patient's medical record within 24 hours after admission or registration, but prior to surgery or a procedure requiring anesthesia services.⁹

42 C.F.R. § 482.51 Condition of participation: Surgical services.

(b) * * *

(1) Prior to surgery or a procedure requiring anesthesia services and except in the case of emergencies:

(i) A medical history and physical examination must be completed and documented no more than 30 days before or 24 hours after admission or registration.

(ii) An updated examination of the patient, including any changes in the patient's condition, must be completed and documented within 24 hours after admission or registration when the medical history and physical examination are completed within 30 days before admission or registration.”¹⁰

Impact of Changes on Dentists

These regulations, effective as of Jan. 26, 2007 and Jan. 1, 2008, respectively, require coordination between the hospital and its medical staff, and communication from the hospital to medical staff regarding how the hospital will implement the regulation and how medical staff should schedule H&Ps. Presumably most, if not all, hospitals with which pediatric and general dentists are affiliated and/or at which they have privileges will be affected, since participation in Medicare or Medicaid programs triggers these requirements. Since the previous H&P requirement was within 7 days of a procedure, the 30-day window is an improvement. However, for outpatient procedures—which are most common for hospital dental surgery—the updated H&P must be completed and documented after admission or registration but prior to surgery. CMS has indicated that the individual who completes the H&P update does not have to be the same individual who did the original H&P. CMS has stated that both documents may be handwritten, dictated and transcribed, or completed electronically.

Other related regulations will be discussed in future columns.

Special thanks to A. Conan Davis, D.D.S., CMS Chief Dental Officer, and LCDR Scott J. Cooper, M.M.Sc, PA-C, CMS Senior Health Insurance Specialist/Policy Analyst for their assistance in reviewing this article. For further information, please contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169 ext. 29 or slitch@aapd.org.

Footnotes

¹ Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for History and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations, 70 Fed. Reg. 15268 (March 25, 2005)

² Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for History and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations, 71 Fed. Reg. 68672 (Nov. 27, 2006)

³ 71 Fed. Reg. 68694 (Nov. 27, 2006)

⁴ 71 Fed. Reg. 68694 (Nov. 27, 2006)

⁵ Medicare Program: Changes to the Hospital Outpatient Prospective Payment System and CY 2008 Payment Rates, the Ambulatory Surgical Center Payment System and CY 2008 Payment Rates, the Hospital Inpatient Prospective Payment System and FY 2008 Payment Rates; and Payments for Graduate Medical Education for Affiliated Teaching Hospitals in Certain Emergency Situations; Medicare and Medicaid Programs: Hospital Conditions of Participation; Necessary Provider Designations of Critical Access Hospitals, 72 Fed. Reg. 66579 (Nov. 27, 2007)

⁶ 72 Fed. Reg. 66882 (Nov. 27, 2007)

⁷ 72 Fed. Reg. 66883 (Nov. 27, 2007)

⁸ 72 Fed. Reg. 66933 (Nov. 27, 2007)

⁹ 72 Fed. Reg. 66933 (Nov. 27, 2007)

¹⁰ 72 Fed. Reg. 66934 (Nov. 27, 2007) **PDT**