AMERICAN ACADEMY of DERMATOLOGY | ASSOCIATION

1445 New York Ave., NW, Suite 800
Washington, DC 20005-2134

MAIN: (202) 842-3555
FAX: (202) 842-4355
www.aad.org

January 15, 2020

Via email to PatientsOverPaperwork@cms.hhs.gov

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard,
Baltimore, MD 21244-1850

Re: Scope of Practice

Dear Administrator Verma,

The American Academy of Dermatology Association (AADA) represents close to 14,000 dermatologists nationwide. We are writing to provide feedback on scope of practice in connection to President Trump's Executive Order (EO) 13890 on Protecting and Improving Medicare for Our Nation's Seniors, issued on October 3, 2019. The AADA is committed to excellence in the medical and surgical treatment of skin disease; advocating high standards in clinical practice, education, and research in dermatology and dermatopathology; and supporting and enhancing patient care to reduce the burden of disease. We appreciate the opportunity to provide our perspective and urge CMS to take these recommendations and concerns into consideration as it formulates future policy.

The EO specifically directs HHS to propose a number of reforms to the Medicare program, including ones that eliminate supervision and licensure requirements of the Medicare program that are more stringent than other applicable federal or state laws. Specifically, the EO directs CMS to:

> *(a) propose a regulation that would eliminate burdensome regulatory billing requirements, conditions of participation, supervision requirements, benefit definitions, and all other licensure requirements of the Medicare program that are more stringent than applicable Federal or State laws require and that limit professionals from practicing at the top of their profession;*
>
> *(b) propose a regulation that would ensure appropriate reimbursement by Medicare for time spent with patients by both primary and specialist health providers practicing in all types of health professions; and*

> *(c) conduct a comprehensive review of regulatory policies that create disparities in reimbursement between physicians and non-physician practitioners and proposing a regulation that would, to the extent allowed by law, ensure that items and services provided by clinicians, including physicians, physician assistants, and nurse practitioners, are appropriately reimbursed in accordance with the work performed rather than the clinician's occupation.*

The AADA participated in the White House conference call on October 3 about this Executive Order and signed onto a letter from the AMA to you on this issue that was submitted on October 29, 2019. On December 26th you asked for the public to help in identifying additional Medicare regulations which contain more restrictive supervision requirements than existing state scope of practice laws, or which limit health professionals from practicing at the top of their license. As CMS endeavors to review this issue, we strongly urge CMS to:

- **Rely on fact-based resources, including a thorough review of the education and training of nonphysician health care professionals and the impact on the overall cost and quality of care; and**
- **Carefully review the true impact of state scope of practice laws on access to care across the country**.

We share the following perspective and concerns:

Qualifications of a Board-Certified Dermatologist

A board-certified dermatologist is a physician who has received extensive training tin the science and art of cutaneous medicine and surgery. A board-certified dermatologist undertakes a minimum of 8 years of extensive medical education (4 years of medical school, 1 year of internship, 3 years (minimum) and training in a dermatology residency accredited by the Accreditation Council for Graduate, followed by a rigorous board certification examination. In order to practice independently, board certified dermatologists complete 12,000 to 16,000 hours of direct patient care and pass 3 standardized USMLE training exams to become licensed physicians.

The education and training of a physician assistant and nurse practitioner fall significantly short of the education and training of a physician. By contrast, physician assistants (PA) obtain a masters degree in 2-3 years after college, are only required to provide 2,000 hours of patient care, and have no internship or residency. With only 500 to 720 hours of direct patient care acquired through training, the average nurse practitioner (NP) has less clinical experience than a physician obtains in just the first year of a three-year medical residency. Furthermore, unlike nurse practitioner postgraduate educational requirements—which vary widely, can be done online, and can be completed in as little as 19 - 24 months—a physician’s educational path is uniform nationwide, with standardized medical curriculum, clinical training, and licensure.

Further, dermatologists are required to pass a series of three comprehensive examinations prior to licensure whereas nurse practitioners must pass a single test consisting of 150-200 multiple choice questions. Similarly, physician assistants must pass a single 300 question multiple choice exam. **The skills and expertise of a PA or NP are not interchangeable with those of a board-certified dermatologist.**

Board-certified dermatologists treat the medical, surgical, pathologic and aesthetic conditions of the skin, hair, nails, and mucous membranes. A dermatologist has extensive knowledge and expertise in cutaneous medicine, surgery, and pathology. The practice of dermatology includes, but is not limited to, diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes, by any medical, surgical, pathologic or aesthetic means, medications, methods, devices, or instruments. These conditions may be primary cutaneous ailments or part of a systemic disease. The practice of dermatology includes, but is not limited to, performing any medical, surgical or aesthetic act or procedure that can alter or cause biologic change or damage to the skin and subcutaneous tissue.

The Value of Board-Certified Dermatologists in the Overall Cost and Quality of Care

Board-certified dermatologists diagnose and treat over 3,000 different diseases and conditions. Dermatologists see patients of all ages - from newborns to the elderly. The delivery of dermatologic care by unsupervised nonphysician personnel is limited and may result in a higher incidence of adverse events, complications, or suboptimal results. Direct access to dermatologists is the easiest and most cost-effective method of providing quality dermatologic services.[1] Studies have indicated that dermatologists are more cost-effective and provide higher quality of care to patients with skin diseases. Improper diagnosis of skin diseases results in: additional costs from unnecessary diagnostic tests, office visits or treatments; possible complications from unnecessary treatments; and prolonged patient suffering. Patients experience loss of income and productivity from missed work due to misdiagnosis. There may even be increased morbidity and potential mortality from delayed diagnosis and treatment.

A 2015 study from the University of Wisconsin comparing malignancy rate of biopsies performed by dermatologists versus non-physicians suggests that an increased use of biopsies may increase the morbidity and cost of care provided when provided by non-physicians.[2] Additionally, there has been a recent rapid increase in malpractice claims filed against nurse practitioners, particularly for botched cosmetic procedures.[3] This is a public health hazard that will be aggravated by weakening

[1] https://server.aad.org/Forms/Policies/Uploads/PS/PS-Cost-Effective%20Dermatologic%20Care%20.pdf

[2] Bennett, D., Xu, Y (2015, August). Biopsy Use in Skin Cancer Diagnosis: Comparing Dermatology Physicians and Advanced Practice Professionals, JAMA Dermatol. August 2015 Volume 151, Number 8.

[3] Jalian H. R., Avram, M.(2013,October 16). Increased Risk of Litigation Associated With Laser Surgery by Nonphysician Operators. *JAMA Dermatol*.doi:10.1001/jamadermatol.2013.7117.

existing supervision laws. It is critical; therefore, that every Medicare beneficiary have direct access to dermatologic services delivered by a dermatologist.

Physician Led Team Care Must be Preserved

The best and most effective care occurs when a team of health care professionals with complementary—not interchangeable—skills work together. Dermatologists, nurse practitioners, and physician assistants have long worked together to meet patient needs because the physician-led team approach to care works. Eliminating physician supervision would sever the tie between the physicians and non-physicians, leading to fragmented care. This is antithetical to the team-based approach, and it is both challenging and risky for patients.

The public supports the physician-led team care model. According to four nationwide surveys, 84% of respondents prefer a physician to have primary responsibility for their diagnosis and management of their health care and 91% of respondents said that a physician's years of medical education and training are vital to optimal patient care, especially in the event of a complication or medical emergency.[4]

Existing law does not prevent nurse practitioners from currently practicing in rural and underserved areas. There is no evidence that removing the loosening supervision requirements will improve access to care. This is further illustrated by the geographic mapping initiative of the American Medical Association, which demonstrates that non-physician health care providers are not located in rural or underserved areas, but rather, are concentrated in the same geographic areas as physicians.

Increasing the responsibility of nurse practitioners is not the solution to a shortage of physicians**.** Allowing nurse practitioners to independently practice would afford nurses the same authority and clinical autonomy that physicians have, without the education and training required of physicians. Claims of a physician shortage do not justify granting nurse practitioners full clinical autonomy; an increased demand for services should not marginalize appropriate medical education and training.

For these reasons, thee optimum degree of dermatologic care is delivered when a board-certified dermatologist provides direct, on-site supervision to all non- dermatologist personnel. When practicing in a dermatological setting, non-physician clinicians, such as nurse practitioners and physicians assistants, should be directly supervised by a board-certified dermatologist, commensurate with the level of supervision defined by the state board of medical examiners or

[4] Surveys of nearly 1,000 adults on behalf of the AMA Scope of Practice Partnership were conducted between 2008 and 2018.

other appropriate state board/agency of the state in which they practice and taking into consideration the training and degree of experience of the non-physician clinician.[5]

Recent Changes to Supervision for Physician Assistants Are Concerning

CMS recently finalized its revision to the physician supervision requirement for physician assistants (PAs). Previously, CMS required general physician supervision for PA services to fulfill the statutory physician supervision requirement. General physician supervision allowed PAs to furnish their professional services without the need for a physician's physical presence or availability. Now, CMS allows the supervision requirements to be met when a PA furnishes their services in accordance with state law and state scope of practice rules for PAs in the state in which the services are furnished, with medical direction and appropriate supervision as provided by state law in which the services are performed. In the absence of state law governing physician supervision of PA services, the physician supervision required by Medicare for PA services would be evidenced by documentation in the medical record of the PA's approach to working with physicians in furnishing their services. We understand that this is an effort to reduce administrative burden and conflicting regulations. ***However, it is the AADA's position that, for purposes of ensuring optimal dermatologic patient care, the supervising dermatologist or a designated alternate dermatologist must be available in person or by electronic communication at all times when the non-physician clinician is caring for patients***.[6] Certain state laws may fall short of these standards, and we are concerned that this proposed change would risk creating an uneven environment wherein care could be compromised.

As physicians, our number one priority is the health and welfare of our patients. We appreciate the opportunity to provide written comments on this important public health issue and urge you to retain physician supervision. We also urge you to carefully review the true impact of state scope of practice laws on access to care across the country. We remain committed to providing high quality care and serving the best interests of our patients with nurse practitioners through physician-led team-based care. For further information, please contact Leslie Stein Lloyd, JD, CAE, IOM,

[5] https://server.aad.org/Forms/Policies/Uploads/PS/PS-Practice%20of%20Dermatology-Protecting%20Preserving%20Patient%20Safety%20Quality%20Care.pdf

[6] AAD/A Position Statement on The Practice of Dermatology: Protecting and Preserving Patient Safety and Quality Care

Director of Regulatory and Payment Policy, at lsteinlloyd@aad.org for the American Academy of Dermatology Association, at (202) 712-2614 or (202) 842-3555.

Sincerely,

George J. Hruza, MD, MBA, FAAD
President, American Academy of Dermatology Association