On August 23, 2012, the Centers for Medicare and Medicaid Services (CMS) issued a final rule on Stage 2 of the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program. Due, in part, to the advocacy efforts of the American Association of Medical Assistants (AAMA), the CMS decided that credentialed medical assistants—including CMAs (AAMA)—would be permitted to enter medication orders into the computerized provider order entry (CPOE) system. This is a major victory for the AAMA and the medical assisting profession.

Summary of the CMS ruling

As reported in the May/June 2012 issue of *CMA Today*, the CMS had decided in the final rule for Stage 1 of the EHR Incentive Program that only licensed health care professionals would be allowed to enter medication orders into the CPOE system. In its April 24, 2012 comments, the AAMA urged the CMS to amend the wording of its regulations to allow “appropriately credentialed healthcare professionals,” as well as licensed professionals, to enter such orders. The AAMA emphasized that CMAs (AAMA) have the knowledge and competency to enter medication orders as directed by the overseeing provider. Authorizing CMAs (AAMA) to enter medication orders, the AAMA asserted, would “allow for enhanced patient care resulting from increased attention to patient needs and greater communication among the health care team.”

In its August 23, 2012 final rule, the CMS agreed with the AAMA and issued the following response to comments received:

> We are particularly concerned with computerized provider order entry (CPOE) usage by eligible professionals (EPs [e.g., physicians, osteopaths, podiatrists]) in this regard. Many EPs practice without the assistance of other licensed healthcare professionals. These EPs in their comments urged the expansion [to any licensed, certified, or appropriately credentialed healthcare professional… who can enter orders into the medical record per state, local and professional guidelines]. We believe this expansion is warranted and protects the concept that the clinical decision support (CDS) interventions will be presented to someone with medical knowledge as opposed to a layperson. The concept of credentialed healthcare professionals is overly broad and could include an untold number of people with varying qualifications. Therefore, we finalize the more limited description of including credentialed medical assistants. The credentialing would have to be obtained from an organization other than the employing organization. [53986]

The Electronic Health Record Incentive Program Stage 1 rule referred only to entering medication orders into the CPOE system. Questions have arisen about whether this final rule permits credentialed medical assistants to also enter laboratory and radiology orders into the CPOE system.
system. In the Stage 2 final rule, the CMS expanded one of its objectives to include the “use of computerized provider order entry (CPOE) for medication, laboratory, and radiology orders.” The wording of the final rule, although open to some debate, supports the conclusion that credentialed medical assistants are authorized to enter medication, laboratory, and radiology orders into the CPOE system. Please note the following:

1. On page 53985 of the Federal Register, the following CMS Proposed Objective is presented: Use computerized provider order entry (CPOE) for medication, laboratory, and radiology orders directly entered by any licensed health care professional who can enter orders into the medical record per state, local, and professional guidelines to create the first record of the order. [Emphasis added.]

2. CMS issued its modified objective on page 53987:

   After consideration of the public comments received, we are modifying this objective for EPs as § 495.6(j)(1) (i) and for eligible hospitals and CAHs [critical access hospitals] at § 495.6(l) (1)(i) to use the same language as Stage 1 (with the addition of laboratory and radiology orders), as we did not finalize our proposed changes to when the order must be entered: “Use computerized provider order entry (CPOE) for medication, laboratory, and radiology orders directly entered by any licensed health care professional who can enter orders into the medical record per state, local, and professional guidelines.”

The CMS objective clearly expands CPOE to laboratory and radiology orders, as well as medication orders. However, it seems as though the wording of this finalized order contradicts the excerpts quoted above and the wider context of the comments and the CMS responses.

A fundamental rule of reconciling conflicting statements in a legal document is that the specific supersedes the general. Based on this principle, it is apparent that the general wording of the modified CMS objective contradicts the specific findings and conclusions in the body of the final rule. Therefore, a correct rendering of the final rule would be as follows:

   Use computerized provider order entry (CPOE) for medication, laboratory, and radiology orders directly entered by a licensed health care professional or credentialed medical assistant who can enter orders into the medical record per state, local, and professional guidelines. [Emphasis added.]

### Limitations in identifying specific credentials

A question has been raised about why the Centers for Medicare and Medicaid Services (CMS) did not limit its recognition of medical assistants to those with a current CMA (AAMA) credential. The answer is that regulation of professions rests primarily with the states. This time-honored legal principle is rooted in the “police power” reserved to the states by the Tenth Amendment of the United States Constitution. The police power consists of the authority of each state to safeguard the health, safety, and welfare of its citizens by legislation, executive branch regulations, and the enforcement of these provisions. The CMS, therefore, has very limited authority to determine which medical assisting credentials are sufficient to protect the public. The CMS can only establish broad parameters in regard to which professionals should be authorized to carry out certain functions under the Medicare and Medicaid Electronic Health Record Incentive Program.

### Significant precedents of the CMS ruling

There are four significant elements of this Stage 2 final rule for the Medicare and Medicaid EHR Incentive Program that deserve special mention. The following provide positive precedents for CMAs (AAMA) that transcend the immediate issue of entering medication, laboratory, and radiology orders into electronic health records.

#### Recognized in federal law

The fact that CMAs (AAMA) are specifically mentioned in the statutes and/or regulations of certain states provides helpful precedent when advocating for medical assisting right to practice issues. However, the fact that the United States Centers for Medicare and Medicaid Services, in rules for the high-profile EHR Incentive Program, finds that only credentialed medical assistants—not all medical assistants—are capable of entering orders in the computerized provider order entry system is of even greater precedential weight on both the federal and state levels. In effect, the CMS is taking the position that credentialed medical assistants are just as able as licensed health care professionals to undertake a responsibility that has enormous implications for patient welfare and the viability of an important federal initiative. This is a powerful argument to unsheathe when opponents argue that licensure is the only regulatory mechanism that can be trusted to ensure competence in health professionals.

#### Distinguished from “credentialed healthcare professionals”

It is sometimes mistakenly thought that “medical assistant” is an overly generic, catch-all descriptor for anyone working in an outpatient setting, who does not have specific clinical or administrative training. This fallacy can now be dispensed with by
the strategic use of CMS language. Note again the following language from the Stage 2 final rule:

The concept of credentialed healthcare professionals is overly broad and could include an untold number of people with varying qualifications. Therefore, we finalize the more limited description of including credentialed medical assistants. [Emphasis added.] [53986]

“Credentialed healthcare professionals” is the overly broad, overly inclusive, and ambiguous phrase, according to the CMS. In contrast, “credentialed medical assistants” is the more limited and precise descriptor that differentiates the competent from the incompetent, and that ensures that correct and meaningful information is entered into the CPOE system.

**Able to act on clinical decision support interventions**

In its comments on the proposed Stage 2 rule, the AAMA informed the CMS that not all medical assistants have the knowledge and competence to be able to enter orders into the CPOE system. The CMS embraced the AAMA’s argument, and presents a compelling rationale why credentialed medical assistants are the only medical assistants who can be trusted to execute the correct and appropriate entry of data into electronic health records:

Based on public comments received, questions submitted by the public on Stage 1 and demonstrations of Certified Electronic Health Record Technology (CEHRT) we have participated in, it is apparent that the prevalent time when Clinical Decision Support (CDS) interventions are presented is when the order is entered into CEHRT, and that not all EHRs also present CDS when the order is authorized (assuming such a multiple step ordering process is in place). This means that the person entering the order could be required to enter the order correctly, evaluate CDS either using their own judgment or through accurate relay of the information to the ordering provider, and then either make a change to the order based on the CDS intervention or bypass the intervention. We do not believe that a layperson is qualified to do this, and as there is no licensing or credentialing of scribes, there is no guarantee of their qualification. [Emphasis added.] [53986]

**Distinguished from “in-house” medical assistants**

According to one theory, clinics and health systems in the near future will not bother hiring medical assistants who have graduated from a postsecondary, accredited medical assisting academic program, and who have a medical assisting credential granted by a third-party standardized testing body, such as the Certifying Board of the American Association of Medical Assistants. These prognosticators predict that large clinics and health systems will create their own in-house medical assisting training programs and in-house tests, and will bestow a medical assisting credential that is only recognizable and of value within the clinic or system. The fact that the CMS goes out of its way to specify that medical assisting credentials “would have to be obtained from an organization other than the employing organization” greatly discredits this spurious theory.

By working with the CMS, the AAMA has helped achieve this landmark ruling, which provides due recognition not only to the medical assisting profession, but also to the importance of rigorous certification standards. By establishing these distinctions, the AAMA has ensured recognition of CMAs (AAMA) and advocated on behalf of the patients they serve.

For the latest information about CMS developments that impact the medical assisting profession and the CMA (AAMA) credential, visit the AAMA website at www.aama-ntl.org and Executive Director Balasa’s Legal Eye On Medical Assisting blog. Or contact him directly at dbalasa@aama-ntl.org or 800/228-2262.