



Donald A. Balasa, JD, MBA
AAMA CEO and Legal Counsel

Medical assistants' competence in performing diagnostic tests

Comments to the CMS

The following was submitted August 14, 2020, to the Centers for Medicare & Medicaid Services (CMS) of the Department of Health and Human Services in regard to proposed rule CMS-1734-P.

The American Association of Medical Assistants® (AAMA) appreciates the opportunity to submit the following comments on the proposed rule [CMS-1734-P]. The AAMA is the national professional association that represents over 80,000 medical assistants who are either members of the AAMA and/or hold the Certified Medical Assistant® (AAMA) credential.

A primary objective of the [AAMA] is reviewing proposed federal and state legislation and regulations/rules and submitting comments and testimony to assist

legislators and regulators in making policy decisions that will protect and enhance the quality and availability of health care throughout the United States. An important part of achieving this objective is providing accurate and timely information about medical assistants' scope of practice under state and federal law.

The medical assisting laws of all states are found by clicking under "State Scope of Practice Laws" on the AAMA home page (www.aama-ntl.org). Articles explaining and clarifying state and federal law can be found on the AAMA website by clicking *CMA Today*/Public Affairs Articles in the ribbon at the top of the home page. Blog posts on current issues can be found on the *Legal Eye: On Medical Assisting* blog (<https://aamalegaleye.wordpress.com>).

I.

By way of background, the position of the [AAMA is] that medical assistants who have met (1) appropriate educational requirements (such as graduation from a medical assisting program [that is] programmatically accredited by a body recognized by the United States Department of Education or the Council for Higher Education Accreditation) and (2) appropriate credentialing requirements (such as holding a current medical assisting credential offered by a certification program accredited by the National Commission for Certifying Agencies or under International Standard ISO/IEC 17024:2012, *Conformity Assessment—General Requirements for Bodies Operating Certification of Persons*¹) fall within the definitions of *clinical staff* and *auxiliary personnel* in the *Medicare Benefit Policy Manual*² and in certain Current Procedural Terminology (CPT) codes.^{3,4} ...

II.

The [AAMA] takes notice of the fact that the Centers for Medicare & Medicaid Services (CMS) is particularly interested in which clinical staff and auxiliary personnel are competent in performing diagnostic tests ordered by a delegating and supervising physician or nonphysician practitioner (NPP). In response, the AAMA wishes to point out that medical assistants who have graduated from a medical assisting program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) are required to demonstrate proficiency in designated clinical tasks as a condition for graduation. Note the following designated tasks in Appendix B (the Core Curriculum requirements) of the CAAHEP *Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting*⁵:

CONTENT AREA I: Anatomy & Physiology

...

2. Perform:

- a. electrocardiography
- b. venipuncture
- c. capillary puncture
- d. pulmonary function testing

...

11. Obtain specimens and perform:

- a. CLIA [Clinical Laboratory Improvement Amendments] waived hematology test
- b. CLIA waived chemistry test
- c. CLIA waived urinalysis
- d. CLIA waived immunology test
- e. CLIA waived microbiology test

III.

The AAMA also takes notice of the following excerpt from ... the proposed rule:

We note that the responses to our request for feedback on the topics in this section did not indicate the number of states that have more flexible scope of practice rules than

our federal regulations, or whether facilities (such as hospitals or nursing facilities) have relevant policies that limit the ability of the impacted professionals to perform certain services. For example, if Medicare payment policy provided for payment of diagnostic tests supervised by NPPs, there may still be facility- or state-specific policies in place that limit NPPs' ability to supervise some or all diagnostic tests, and those limitations would inform the potential impact of changing our policy. While our proposed flexibility may increase the capacity and availability of practitioners who can supervise diagnostic tests, which would alleviate some of the demand on physicians as the only source to perform this particular function, we have not located information indicating the degree to which NPP scope of practice includes supervision of auxiliary staff, especially for the subset of services that are diagnostic tests. There is a wide range of diagnostic tests, from a simple strep throat swab to more sophisticated and/or invasive tests such as x-rays and cardiology procedures. We would need to understand the scope of practice for many types of auxiliary staff (some of whom are not licensed) who could potentially provide these tests under the supervision of an NPP, including RNs [registered nurses], LPNs [licensed practical nurses], medical assistants, radiologic technicians, and many others.⁶

... The [AAMA] provides a service to medical assistants, delegating licensed providers, federal and state policymakers, and other health professionals by reviewing state laws and offering legal opinions on the scope of practice for medical assistants. Ascertaining the scope of practice can be difficult because the phrase *medical assistant* does not always appear in state law. Rather, under the laws of many states, medical assistants are subsumed within statutory categories such as unlicensed assistive personnel, unregulated assistive personnel, and unlicensed individuals.

The scope of tasks delegable by nurse practitioners [NPs] and physician assistants [PAs] to medical assistants is not always delineated explicitly in state law. In his articles and legal opinion letters for each state, AAMA Legal Counsel [Donald A. Balasa, JD, MBA,] has substantiated his

position that the laws of all states permit NPs and PAs to delegate to knowledgeable and competent medical assistants the performing of certain types of swabbing, electrocardiography, finger sticks, and CLIA-waived tests. Approximately 40 of the 50 states require medical assistants (and other personnel) to complete formal training and/or pass a test in limited scope radiography as a prerequisite for exposing patients to ionizing radiation.

The states of Washington, South Dakota, and New Jersey require medical assistants to complete formal medical assisting education and/or pass a medical assisting exam to perform venipuncture.

The [AAMA] again thanks the [CMS] for the opportunity to submit the above comments. ♦

Questions about these comments may be directed to AAMA CEO and Legal Counsel Donald A. Balasa, JD, MBA, at dbalasa@aama-ntl.org.

References

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2. Centers for Medicare & Medicaid Services. *Medicare Benefit Policy Manual*. CMS publication 100-02. Accessed August 14, 2020. <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.PDF>
3. Balasa DA. Medicare CCM and TCM programs: defining medical assistants' roles and services. *CMA Today*. 2018;51(2). Accessed August 14, 2020. <https://www.aama-ntl.org/cma-today/archives/article?id=4a58db4a-4840-6a90-a81c-ff00003b2c18#WpbWt-jwaUk/>
4. Balasa DA. Medical assistants' role in remote physiological monitoring services. *CMA Today*. 2020;53(2). Accessed August 14, 2020. <https://www.aama-ntl.org/cma-today/archives/article?id=9c49df4a-4840-6a90-a81c-ff00003b2c18>
5. Commission on Accreditation of Allied Health Education Programs. *Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting*. Revised 2015. Accessed August 14, 2020. <http://www.caahep.org/documents/file/Publications-And-Governing-Documents/MedicalAssistingStandards.pdf>
6. Medicare Program; CY 2021 Revisions to Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; [...]. *Fed Regist*. 2020;85(159):50139. To be codified at 42 CFR §410, 414, 415, et al.