Re: Payment Rule: Draft Assistant at Surgery 101 V.01 5/23/13

Dear Colorado Clean Claims Task Force,

AORN is the national professional association dedicated to advancing patient outcomes for surgical and other invasive procedures. Many of AORN’s over 43,000 perioperative nurse members work as registered nurse first assistants in the operating room, some of whom hold an advanced practice license, and some of whom practice under their registered nurse license.

The National Association of Clinical Nurse Specialists (NACNS) represents Clinical Nurse Specialists (CNSs) of whom there are an estimated 69,017. Clinical Nurse Specialists are advanced practice registered nurses (APRNs) who are licensed registered nurses with graduate degrees at the master’s and/or doctoral level in a specialty. Many CNSs serve as Assistants at Surgery.

We are grateful to have the opportunity to submit these comments concerning the Task Force’s draft proposed Payment Rule regarding first assistants at surgery. As recognized in the Colorado Department of Regulatory Agencies (DORA) 2004 Sunrise Review report on surgical assistants, the role of the assistant at surgery is performed by a range of health professionals in Colorado, including registered nurses (RNs), nurse practitioners (NPs), clinical nurse specialists (CNSs), and certified registered nurse first assistants (CRNFAs). RNs, NPs, CNSs, and CRNFAs performing assistant at surgery services all practice within the scope of their registered nurse license in accordance with the Colorado Board of Nursing’s Scope of Practice algorithm.

The 2011 American College of Surgeons Physicians as Assistants at Surgery study and Statement of Principles cited therein also confirm that use of registered nurses as first assistants at surgery is acceptable practice.

This letter will collectively refer to the RNs, NPs, CNSs, and CRNFAs performing assistant at surgery services as RNFAs. Under Colo. Rev. Stat. Title 10, Article 16, Part 1, §10-16-104, Colorado payers may not deny reimbursement for assistant at surgery services provided by registered nurses.

Recommendation: Consistent Use of the Term Assistant at Surgery

We noted that the draft Payment Rule appears to use the terms “Assistant at Surgery,” “Assistant Surgeon” and “Assistant Surgery” interchangeably. We recommend consistent use of the term “Assistant at Surgery” throughout because it is a clear and accepted reference to the exact function being performed in the operating room without limitation on who is performing the function.
As noted by DORA in its 2004 report, assistant at surgery functions are performed by a wide range of providers in Colorado. Also, because of the range of providers that do provide this service, we recommend adding a clarification in the definition section requiring the assistant at surgery to be practicing within the scope of his or her practice.

**Recommendation: CPT® and HCPCS Modifiers**

The Associated CPT® and HCPCS modifiers proposed in the rule read as if the only time a hospital or other facility could bill for an assistant at surgery who is not a surgeon or resident is when a qualified surgeon or resident is not available. Many institutions use RNFAs as a matter of course because of the broad and patient-centered education and experience nurses bring to the operating room. Many RNFAs have worked as circulators and scrub nurses before becoming an RNFA, and are often the provider of choice for surgeons because of their extensive knowledge of the operating room, their patient-centered education, and their ability to anticipate and manage complications in the OR. A billing requirement that facilities look first to surgeons and residents to act as first assistants at surgery is not cost-effective, and nor does it take into account the preferences of the operating surgeon in selecting an assistant at surgery. Reimbursement to first assistants at surgery who are not physicians represents a substantial cost savings to the health care industry.

We also noted that as drafted, and because of the term “Assistant Surgeon,” it is unclear whether billing modifier 80, 81 and 82 are to be reserved for only those assistants at surgery who are physicians. In addition to clarification on whether RNFA services would ever be billed under the modifiers 80, 81 and 82, the –AS modifier should include a reference to registered nurse first assistants (who are not NPs or CNSs). Such an omission could jeopardize a number of practicing RNFAs’ ability to continue to receive payment for their services. Including RNFAs and other service providers here will serve as an important confirmation of payment eligibility and consistency for assistants at surgery, which should also help protect Colorado surgery patients from unregulated balance billing by assistants at surgery.

Finally, many RNFAs directly bill for their services. The draft Payment Rule should be clear that RNFAs may continue to directly bill for their services (ie, RNFA services should not have to be billed by the hospital or other facility).

Thank you in advance for your consideration. If you have any questions, please do not hesitate to contact us directly.

**National Association of Clinical Nurse Specialists**
Carol Manchester, President
(215) 320-3881

**Association of periOperative Registered Nurses**
Linda Groah, CEO/Executive Director
(303) 755-6304