



## California Nurse-Midwives Association Position Statement on CNM Admission and Discharge Privileges in California Hospitals

*CNMA takes the position that Certified Nurse-Midwives (CNMs) should have full admission and discharge privileges in California hospitals. The CNM's ability to admit and discharge hospital patients is a critical component of full integration of CNMs into the maternity care system, fostering continuity of care and improving the quality of California's maternal child health care. No federal, state, or local laws prohibit CNMs from being granted admission and discharge privileges.*

### BACKGROUND

California Senate Bill 1237, which became effective on January 1, 2021, effectively replaced the requirement for physician supervision of nurse-midwives (CNMs) with a team-based, collaborative model of care.<sup>1</sup> The impetus for this change was multifactorial:

- Physician supervision geographically tethered nurse-midwives to physicians, preventing CNMs from providing services where they are needed most.
- Independent CNMs (home birth, birth center and independent CNMs with hospital practices) were finding it increasingly difficult, if not impossible, to find a physician supervisor, which prevented them from entering or remaining in practice and hindered the creation of innovative models of care known to improve maternal and newborn outcomes.
- As the Legislative Analyst's Office concluded in its 2020 report on its analysis of California's requirement for physician supervision of CNMs,<sup>2</sup> physician supervision does not improve quality or safety, nor does it decrease costs, but it most certainly prevents the integration and scale up of nurse-midwifery in California.

By replacing physician supervision with team-based care, the passage of SB 1237 was the first major step toward integrated nurse-midwifery care. ***The next step is to enable CNMs to be full partners in care at the facilities where they provide care, including hospitals.*** The American College of Nurse-Midwives' (ACNM's) position on this issue is that "safe, quality health care can best be provided when CNMs are permitted to provide independent midwifery care within their scope of practice while fostering consultation, collaborative management, and seamless referral and transfer of care based on the needs of patients."<sup>3</sup> Not having admitting and discharge privileges diminishes this process and predictably results in ineffective coordination of care and unnecessary duplication of administrative tasks.

Even more importantly, the more CNMs are relieved from restrictions that prohibit them from practicing independently and from becoming full partners in maternity care, the greater impact hospitals, physicians, and midwives will make in reducing California's unacceptably high maternal mortality and morbidity rates. Many California women either do not receive the type of maternity care services they need or desire and many do not have access to care at all. Thus, the California Nurse-Midwives Association (CNMA) believes it is critical for all stakeholders to embrace all changes that have been shown to improve maternity care systems and remove all barriers to quality care and unnecessary restrictions on midwifery practice that do not reflect scientific evidence, good policy, or the law.

The American College of Obstetricians and Gynecologists similarly states<sup>4</sup>:

*“Integrated team based care is an important aspect of quality care. Hospitals should consider expanding bylaws to allow qualified health care providers to admit and discharge patients and to function to the full extent of their education, certification and experience and within their legal scope of practice and licensure.”*

## **PRACTICE & POLICY**

Some hospitals in California already grant CNMs admitting and discharge privileges, while others do not. This has led to confusion as to the legality of these privileges for CNMs. Opponents to granting admitting and discharge privileges to CNMs or other non-physician practitioners commonly but inappropriately and incorrectly turn to three sources to support their position: (i) provisions in Title 22 of the California Code of Regulations regarding medical staff composition; (ii) the Medicare “Conditions of Participation” (CoPs) for hospitals, specifically the COP pertaining to the governing body’s obligation to establish which categories of practitioners may admit and discharge patients and oversee their care; and (iii) the hospital accreditation standards of The Joint Commission. As explained in the rest of this section, none of these sources serve to prohibit CNMs from obtaining privileges to admit and discharge hospital patients for midwifery care. Nor does the Nurse Practice act prohibit CNM’s from being granted such privileges, with or without the order or approval of, or co-admission by, a physician.

### **Title 22**

Title 22 of California’s Code of Regulations provides, at Section 70703,<sup>5</sup> that only physicians, dentists, podiatrists, and clinical psychologists can be designated as “medical staff.” For this reason, California hospitals that grant admitting and discharge privileges to CNMs and other non-physician practitioners typically designate them as being in a different clinical staff category, such as “Allied Health” or “Associate Medical Staff.” The designation of physicians, dentists, podiatrists, and clinical psychologists as “medical staff” does not serve to prohibit practitioners in other professions from being granted admission and discharge privileges. Moreover, ***nothing in Title 22 can be interpreted as restricting or prohibiting hospitals from granting admitting and discharge privileges to CNMs.*** Nor does any provision of Title 22 or any other applicable authority require a physician to approve or co-admit a CNM’s patients.

### **Medicare Conditions of Participation**

Another source that some incorrectly cite as prohibiting hospitals from granting admitting and discharge privileges to CNMs is Section 482.12 of the Medicare “Conditions of Participation” (CoPs).<sup>6</sup> This COP addresses the governing body’s obligations to ensure that Medicare beneficiaries are provided with certain standards of care from the medical staff. It specifies, at subsection 482.12(c)(1), the categories of practitioners that Medicare patients must be “under the care of” in the hospital. They include physicians, dentists, and podiatrist as well as certain other non-physician practitioners—clinical psychologists, optometrists, and chiropractors—but only with respect to the care they are qualified to provide.

Those who cite this COP in opposition to permitting CNMs to have admitting and discharge privileges fail to acknowledge that ***this provision only applies to Medicare patients and does not even address who may admit or discharge Medicare patients or any other patients***—it only pertains to the type of practitioner who is ultimately responsible for the patient’s hospital care. Moreover, this COP explicitly acknowledges, at Subsection 482.12(c)(2), that practitioners in categories other than those listed in Subsection 482.12(c)(1) may admit Medicare patients. The only requirement pertaining to admitting privileges is that only types of practitioners who may admit patients is that they must be a licensed practitioner permitted by the State to admit patients to a hospital.”

In short, this COP is not only silent on the type of practitioner under whose care *non-Medicare patients* must be, it recognizes that other categories of practitioners may admit Medicare patients, a clear indication that, even if the rule applied to non-Medicare patients, it would not likely prohibit such other categories from admitting them either.

This analysis is consistent with and supported by CMS in its State Operations Manual (SOM),<sup>7</sup> which includes interpretive guidelines to surveyors who validate hospitals’ compliance with the Conditions of Participation. The SOM states, in the section titled “482.22: Medical Staff” (emphasis added):

CMS expects that all practitioners granted privileges are also appointed as members of the medical staff. However, if State law limits the composition of the hospital’s medical staff to certain categories of practitioners, e.g., only physician practitioners, ***there is nothing in the CoPs that prohibits hospitals and their medical staffs from establishing certain practice privileges for those specific categories of non-physician practitioners excluded from medical staff membership under State law***, or from granting those privileges to individual practitioners in those categories, as long as such privileges are recommended by the medical staff, approved by the governing body, and in accordance with State law.

### **The Joint Commission**

The Joint Commission’s position on privileges granted to non-physician practitioners is reflected in the following<sup>8</sup>:

A licensed independent practitioner (LIP), defined as an individual, as permitted by law and regulation, and also by the organization, to provide care and services without direction or supervision within the scope of the individual’s license and consistent with the privileges granted by the organization. Each state has different laws defining who can practice without supervision...Privileges are granted by the governance of the organization after evaluation of the education and training the provider has presented. Privileges allow the LIPs to perform, or give the care, treatment, and services requested by the organization to their patients.

## CONCLUSION

For the reasons set forth in this paper, it is the position of the California Nurse-Midwives Association that CNMs can legally admit and discharge patients whose care and treatment fall within their scope of practice, and can do so independently, without the co-signature of a physician. The Medical Staff of each individual hospital has the independent authority to update their bylaws to make CNMs eligible for such privileges, and California law does not prohibit this.

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