Physicians May Delegate Tasks, Not Supervision

**By Kathleen M. Wilson**

Following a series of clarifications, the Centers for Medicare & Medicaid Services has spelled out the roles and tasks that may be performed by physicians and nonphysician practitioners (NPPs) in long-term care facilities. This summer, AMDA members worked with the CMS to confirm that physicians continue to have a supervisory role in resident care. While physicians may delegate tasks to NPPs, those caregivers must work in collaboration with and under the supervision of physicians. After completing the initial comprehensive visit to a SNF resident, the physician may start delegating tasks to the NPP. But it is the physician making the delegation, not the facility.

Even in states that allow NPPs to handle the care of residents, each resident must remain under the care and supervision of a physician. In states that allow NPPs to work independently, the more stringent federal regulation applies: The NPP must work collaboratively with a physician in the nursing home.

The clarification comes as some facilities may be trying to utilize NPPs in lieu of physicians for certain patient-care tasks. Administrators of such facilities may point to the regulations at 42 C.F.R. 483.40(f) that state, “At the option of the State, any required physician task in a [nursing facility] (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician.”

However, AMDA has pointed out and the CMS has confirmed the importance of the entire regulation and especially the phrase “is working in collaboration with a physician.”

The CMS attempted to clarify the roles and tasks of providers with the November 2003 SKC-04-08 letter titled “Physician Delegation of Tasks in Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs).” For many AMDA physicians, however, that memo did not clarify when the physician must perform a task personally.

“There is nothing in the regulations nor is there a list of tasks that describes what the physician must perform. There is much inference but little specificity,” said Len Gelman, MD, CMD, who is course director of the AMDA Core Curriculum and has educated physicians on state and federal regulations for 15 years.

He added, “The questions AMDA has received from its members focus not solely on which tasks can be delegated, but when, by regulation, should the physician perform a task him/herself. A point of confusion perhaps lies with the meaning of the terms ‘role’ and ‘task’ themselves. A role is the set of behaviors an organizational member is expected to perform and that he/she is obligated to perform, while tasks are specific activities used to carry out a major domain of activity, or function, lying within that role. This is a point that we stress during the Core Curriculum course and was reiterated with CMS staff as well during our recent discussions.”

A table within the November 2003 CMS memorandum outlines who may perform physician tasks (see top table, page 3). The issue of the nonphysician practitioner’s employment status spurred many questions to the CMS. Tasks cited in the table include completion of the initial comprehensive visit/orders, certification and recertification, performance of physician visits, and other medically necessary visits.

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CMS Offers Delegate Balance

that may be performed prior to the initial comprehensive visit. Under the code of federal requirements for long-term care facilities, the regulations at 42 C.F.R. 483.40(e) state, ‘A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under State law or by the facility’s own policies.’

AMDA presented the CMS with a draft list of tasks that physicians must perform (see bottom table). In its recent responses, ‘the CMS is clear that the overall care of the resident is the responsibility of the physician.’ This is the role of the physician,’ said AMDA Public Policy Committee Chairperson and AMDA Core Curriculum faculty member Karyn Leible, RN, MD, CMD. While individual tasks may be delegated, the supervisory role of the attending physician remains. In the NF (nonskilled, non-Part A), an NPP who is not employed by the facility may perform the admission history and physical and establish the initial plan of care, but under the supervision of the attending physician. In the SNF (skilled, Part A), it is the physician who must do the initial history and physical and establish the plan of care. Regulatory visits may be alternated, as delegated by the physician, but the care of the resident remains under the supervision of the physician. “The CMS is very clear on these expectations,” said Dr. Leible. For useful links on this topic go to www.amda.com/advocacy/nonphysicians.cfm.

KATHLEEN M. WILSON, PhD, is director of government affairs for AMDA.

### Tasks the Physician Must Perform

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Language</th>
<th>Clarification</th>
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<tbody>
<tr>
<td>483.40</td>
<td>Each resident must remain under the care of a physician.</td>
<td>Physicians cannot delegate the responsibility for the total care of the resident. They can only delegate certain tasks.</td>
</tr>
<tr>
<td>483.40 (a)(1)</td>
<td>The medical care of each resident is supervised by a physician.</td>
<td>The supervisory physician’s role cannot be delegated. However, even in states that allow nonphysician practitioners to handle the care of the resident, the resident must remain under the care and supervision of a physician.</td>
</tr>
<tr>
<td>483.40 (e)</td>
<td>Physician delegation of tasks in SNFs. Except as specified in paragraph (e)(2) of this section, a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who—i. (iii) Is under the supervision of the physician.</td>
<td>The physician’s supervisory role cannot be delegated. The emphasis in the regulations at 42 C.F.R. 483.40(f): “At the option of the State, any required physician task in an NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician.”</td>
</tr>
<tr>
<td>483.40 (d)</td>
<td>A nursing facility must—(B) provide for having a physician available to furnish necessary medical care in case of emergency.</td>
<td>A physician must be available to furnish care in the case of an emergency. The overall responsibility for care of the resident can never be delegated away from the physician.</td>
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Source: AMDA

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