

CMS Anesthesia Conditions of Participation (COP) and Interpretive Guidelines (IGs): a hands on exercise

One of the many responsibilities a director has is to comply with all of the regulations governing a practice. Central to these regulations in healthcare, are the CMS Conditions of Participation (COP). Hospitals are required to be in compliance with the Federal requirements set forth in the Medicare Conditions of Participation (COP) in order to receive Medicare/Medicaid payment.

Every Anesthesiologist should be familiar with the Centers for Medicare & Medicaid Services' (CMS) Conditions of Participation (COP) and Interpretive Guidelines (IG) as surveyors use them to guide inspections. Following such guidelines also helps to ensure full reimbursement. CMS is a government agency, submitting a claim that does not meet the guidelines can be considered fraud. If audited, and found deficient, the individual can be subject to repayment penalties and fines.

These regulations are often discussed at practice management meetings. However, formal instruction is rarely offered in any residency training program. Most Anesthesiologists are aware that these conditions need to be observed, but few in my experience, know where they can be found and what is actually in them. An understanding of how all the laws and regulations in the United States are organized is very useful and may be considered by some to be part of one's civic duty. You are familiar with documents such as the Declaration of Independence and the Constitution of the United States, but do you know the Code of the Federal Regulations or the Federal Register?

There are two important government sources of information worth knowing about, the Code of Federal Regulations and the Federal Register.

The Code of Federal Regulations (CFR) is where all general and permanent rules and regulations that have been enacted into administrative law are stored. Regulations are added to the CFR only after they have been published in the Federal Register. The Federal Register is a daily publication of the US Federal Government that issues proposed and final administrative regulations of federal agencies. All the executive departments and agencies of the federal government of the United States contribute to the register.

It is an interesting and *fun* exercise to navigate through the electronic CFR (eCFR), on the web, in order to gain a better understanding of how our government is organized.

The Anesthesia CMS COP are found in the:

CODE OF FEDERAL REGULATIONS: Title 42, Chapter IV Subchapter G Subpart A, sub-subpart 482 sub-sub-subpart 52.

How do we get there? In this exercise, we will follow the steps to find the CMS COP.

Start by following this address

<http://www.ecfr.gov/cgi-bin/ECFR?page=browse>

The Code of Federal regulation is divided into 50 titles. From Title 1, General provision, to Title 50 Wildlife and Fisheries. We will go to Title 42 - Public Health

Title 42 Public Health, is further divided into 5 chapters. (I- V) We want Chapter IV. CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Chapter IV is further divided into subchapters A thru H. We want SUBCHAPTER G — STANDARDS AND CERTIFICATION . Subchapter G - STANDARDS AND CERTIFICATION is divided into Parts 482 - 498)

Part 482 is titled - CONDITIONS OF PARTICIPATION FOR HOSPITALS. It has 104 subsections; we want subsection 52. 482.52 Condition of participation: Anesthesia services. It is often written as, § 482.52 .

Here we find the actual language for the CMS Anesthesia COPs

If the hospital furnishes anesthesia services, they must be provided in a well-organized manner under the direction of a qualified doctor of medicine or osteopathy. The service is responsible for all anesthesia administered in the hospital.

(a) Standard: Organization and staffing.

The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered only by—

- (1) A qualified anesthesiologist;
- (2) A doctor of medicine or osteopathy (other than an anesthesiologist);
- (3) A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;
- (4) A certified registered nurse anesthetist (CRNA), as defined in §410.69(b) Of this chapter, who, unless exempted in accordance with paragraph (C) of this section, is under the supervision of the Operating practitioner or of an anesthesiologist who is immediately available if needed; or
- (5) An anesthesiologist's assistant, as defined in §410.69(b) of this chapter, who is under the supervision of an anesthesiologist who is immediately available if needed.

(b) Standard: Delivery of services. Anesthesia services must be consistent

With needs and resources. Policies on anesthesia procedures must include the delineation of preanesthesia and post anesthesia responsibilities. The policies must ensure that the following are provided for each patient:

- (1) A preanesthesia evaluation completed and documented by an individual qualified to administer anesthesia, as specified in paragraph (a) of this section, performed within 48 hours prior to surgery or a procedure requiring anesthesia services.
- (2) An intraoperative anesthesia record.
- (3) A postanesthesia evaluation completed and documented by an individual qualified to administer anesthesia, as specified in paragraph (a) of this section, no later than 48 hours after surgery or a procedure requiring anesthesia services. The postanesthesia evaluation for anesthesia recovery must be completed in accordance with State law and with hospital policies and procedures that have been approved by the medical staff and that reflect current standards of anesthesia care.

(c) Standard: State exemption.

- (1) A hospital may be exempted from the requirement for physician supervision of CRNAs as described in paragraph (a)(4) of this section, if the State in which the hospital is located submits a letter to CMS signed by the Governor, following consultation with the State's Boards of Medicine and Nursing, requesting exemption from physician supervision of CRNAs. The letter from the Governor must attest that he or she has consulted with State Boards of Medicine and Nursing about issues related to access to and the quality of anesthesia services in the State and has concluded that it is in the best interests of the State's citizens to optout of the current physician supervision requirement, and that the optout is consistent with State law.
- (2) The request for exemption and recognition of State laws, and the withdrawal of the request may be submitted at any time, and are effective upon submission.

[51 FR 22042, June 17, 1986 as amended at 57 FR 33900, July 31, 1992; 66 FR 56769, Nov. 13, 2001
71 FR 68694, Nov. 27, 2006; 72 FR 66934, Nov. 27, 2007]

From time to time, CMS issues revised Interpretive Guidelines (IGs), pertaining to the COPs.

The Interpretive Guidelines serve to interpret and clarify the Conditions. They are not themselves regulations. The Interpretive Guidelines merely define or explain the relevant statute and regulations and do not impose any requirements that are not otherwise set forth in statute or regulation. They are not published in the Federal Register. They are published directly by the CMS

This link will take you to the CMS site for IGs

<http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions.html?DLSort=3&DLEntries=10&DLPage=1&DLSortDir=descending&DL>

For our exercise, use the filter to search for Anesthesia related IGs

In conclusion, although most Anesthesiologists are familiar with the CMS COPs, most do not know where to actually find them. Fewer still are familiar with the Interpretive Guidelines. Thanks to professional societies such as the AACD, the ASA and its state components, information pertaining to COPs and the IGs are distributed throughout the Anesthesiology community. It is a useful exercise in civics to understand where these documents can be found, and how they relate to the numerous other regulations that govern our lives. If you have the time, I suggest you peruse through the eCFR. It's your government.

Disclaimer- Advice given is general. Readers should consult professional counsel for specific legal, ethical, or clinical questions.