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OQA Memo 07-004  
Supersedes memo 06-006

**To:** Hospitals

Hosp 02

**From:** Otis Woods, Director  
Office of Quality Assurance

Variance of Section HFS 124.12(5)(b)11, Wisconsin Administrative Code:  
Authentication of Physician Orders in Hospitals

This memo supersedes DDES-BQA-06-006, issued May 2, 2006. The variance granted in DDES-BQA-06-006 is revoked and replaced by the variance in this memo, which explains the Department's current position on authentication of physician orders in hospitals and aligns the state requirements with federal Medicare regulations.

### History

The State rule governing physician authentication, section HFS 124.12(5)(b)11, Wisconsin Administrative Code, states that:

Medical staff by-laws and rules shall include...a statement specifying categories of personnel duly authorized to accept and implement medical staff orders. All orders shall be recorded and authenticated. All verbal and telephone orders shall be authenticated by the prescribing member of the medical staff in writing within 24 hours of receipt.

The Department of Health and Family Services (DHFS or Department) has issued a number of variances of this requirement, as described in DDES-BQA-06-006; DDES-BQA-06-002; DSL-BQA-05-010; DSL-BQA-00-015; and DSL-BQA-98-050.

As a matter of public policy, DHFS does not intend to have rules, rule interpretations, variances, or waivers that, if implemented, would put a hospital out of compliance with Medicare regulations.

New Medicare regulations addressing section 42 CFR 482.23, Condition of Participation: Nursing Services, were published in the Federal Register / Vol. 71, No. 227 / Monday, November 27, 2006, and became effective January 26, 2007.

**New Variance:**

Effective immediately, the Department grants a statewide variance of section HFS 124.12(5)(b)11, Wisconsin Administrative Code, the State rule governing physician authentication as follows:

**Medical staff by-laws and rules shall include...a statement specifying categories of personnel duly authorized to accept and implement medical staff orders. All orders shall be recorded, dated, timed, and authenticated. All verbal and telephone orders shall be dated, timed, and authenticated in writing by a practitioner who is authorized to write orders by hospital policy within 48 hours of receipt.**

Paralleling new federal regulations, this variance now applies to all verbal and telephone orders, not just orders for drugs and biologicals. The federal regulation applies to all components of the hospital that are certified by the Centers for Medicare and Medicaid Services (CMS). Please note that section HFS 124.12(5)(b)11 applies only to inpatient orders.

The Department continues the previous State interpretation of this provision as it concerns authentication by physicians other than the prescribing physician, as follows: "The hospital may develop medical staff by-laws and hospital policies delineating circumstances under which a physician, who is a member of the medical staff, may sign verbal or telephone orders, as well as the histories and physicals done by other physicians who are members of the medical staff. This is done with the understanding that the signing physician is then professionally and legally responsible for the treatments and medications prescribed under the orders, as well as the diagnostics on which the orders are based." This long-standing State interpretation is consistent with CMS's comments in the Federal Register, November 27, 2006:

Ultimately, the prescribing practitioner is responsible for authenticating the verbal order. A hospital has the flexibility to develop policies and practices to implement this regulation in a manner that makes sense for their hospital based on the needs of the patient population served. When a practitioner authenticates a verbal order that he or she did not give, the practitioner accepts responsibility for the order and is validating that the order is complete, accurate, and final based on the patient's condition. We expect a practitioner responsible for the care of the patient to have knowledge of the patient's hospital course, medical plan of care, condition and current status. A practitioner who does not possess this knowledge about a patient should not be authenticating verbal orders for this patient.

Another change in Medicare regulations, pertaining to authentication of verbal orders and incorporated in the new variance of section HFS 124.12(5)(b)11, is that the definition of "practitioner who is authorized to write orders by hospital policy" now includes physician assistants, and in Wisconsin, advanced practice nurse prescribers. CMS comments in the Federal Register, November 27, 2006, are as follows:

A physician assistant or nurse practitioner may only authenticate verbal orders written by a physician or other licensed independent practitioner that they have authority to write themselves as determined by hospital policy in accordance with state law. For example, some hospitals limit who may give orders for certain types of drugs or therapies. If a physician assistant or nurse practitioner is not permitted by hospital policy to order a specific drug or therapy, he or she would not be permitted to authenticate a verbal order for such a drug or therapy. Hospitals have the flexibility to limit who may authenticate verbal orders. In addition, a physician assistant or nurse practitioner may only authenticate verbal orders for a patient for whom they have physician delegated responsibility. Like all practitioners responsible for the care of the patient, a physician assistant or nurse practitioner would be expected to have knowledge of the patient's hospital course, medical plan of care, condition and current status. With this knowledge, a practitioner can safely evaluate the completeness and accuracy of a verbal order.

In Wisconsin, the only registered nurses who may write hospital orders are advanced practice nurse prescribers (APNP). The Department of Regulation and Licensing interpretation of the authority of APNPs is that such individuals may issue an order for medications verbally or in writing directly to the hospital pharmacy. The APNP may not give the order verbally to an RN, LPN, ward clerk, or administrative assistant to either call the order in to the pharmacy or write the order in the medical record for conveyance to the pharmacy.

The new CMS regulations regarding authentication of verbal orders are scheduled to "sunset" after five years. The Department will address any changes in those regulations that may be made at that time.

Following is a link to the Federal Register of November 27, 2006, which contains CMS comments and the final rule: <http://edocket.access.gpo.gov/2006/pdf/E6-19957.pdf> (exit DHFS).

Please note that the position of CMS continues to be that, "The use of verbal orders should be limited to those situations in which it is impossible or impractical to write the order or enter it into the computer. Verbal orders are not to be used for the convenience of the ordering practitioner." This is the same standard of practice that the Department expects hospitals to follow.

The Department has found significant noncompliance with the existing federal regulations at section 42 CFR 482.24(c)(1). Relevant CMS comments in the Federal Register are:

This requirement maintains and reinforces the current regulation for authentication of all medical record entries. It requires that all patient medical record entries be legible, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating a service provided. This standard has not been revised and, therefore, is being finalized without change.

The federal regulation requiring dating and timing of all patient medical record entries is consistent with section HFS 124.14(3)(a)12, which requires that, "...each patient's medical record contains...physician notes and non-physician notes providing a **chronological** picture of the patient's progress which are sufficient to delineate the course and the results of treatment; [emphasis added.]" and with section HFS 124.24(2)(d)1.i, which requires that emergency room patient records contain:

Appropriate time notations, including time of the patient's arrival, time of physician notification, time of treatments, including administration of medications, and time of patient discharge or transfer from the service.

Accordingly, language specifically stating that all orders shall be dated and timed has been included in the new waiver.

Any questions regarding this memo may be directed to the Office of Quality Assurance, Health Services Section, at (608) 243-2024, or the Office Director, Otis Woods, at (608) 267-7185.