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CMS Issues Final Rule Revising Conditions of Participation for Telemedicine

On May 5, 2011, the Centers for Medicare & Medicaid Services (CMS) issued a final rule revising the regulations governing the conditions of participation (CoPs) for both hospitals and critical access hospitals (CAHs). These revisions allow for a new credentialing and privileging process for physicians and other practitioners who provide telemedicine services from a "distant site." The goals of the final rule are to increase patient access to specialty services and reduce the credentialing and privileging burden on small hospitals and CAHs. The regulations go into effect on July 5, 2011.

While CMS' stringent reimbursement rules for telemedicine services have historically hindered the adoption of this technology in the United States, the new rule is an important step toward more widespread adoption of telemedicine.

The Joint Commission (TJC) telemedicine standards have for some time permitted "privileging by proxy." This process allows a TJC-accredited facility to accept the telemedicine privileging decisions of another TJC-accredited facility. Hospitals have used this process to alleviate the administrative burden associated with credentialing and privileging each distant-site physician or other practitioner. However, TJC's standards have been in direct conflict with CMS' CoPs requiring hospitals and CAHs to privilege **each** physician and practitioner providing telemedicine services to its

Squire Sanders' multidisciplinary Health Care Reform Task Force provides clients with comprehensive and practical understanding of reform's impact. In addition, our Triage Health Law Blog discusses the rapidly evolving health care industry in the wake of reform, and our Accountable Care Forum provides analysis of proposed accountable care organization (ACO) federal regulations. Although both sites focus on the new challenges and opportunities presented by recent government action, they also examine other aspects of today's health care industry.

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patients **as if the practitioner were onsite.**

Since July 15, 2010, the law has required TJC to secure CMS approval of its accreditation standards for it to confer Medicare-deemed status on hospitals. This requires TJC to conform its accreditation standards to the Medicare requirements including those for credentialing and privileging.

The final rule brings the CoPs in line with TJC standards and includes several important changes:

- The governing body of a Medicare-participating hospital or CAH whose patients receive telemedicine services may grant telemedicine privileges to distant-site practitioners based on the distant site's credentialing and privileging information if the distant-site hospital also participates in Medicare. Additionally, the medical staff of a distant-site telemedicine entity that is not a Medicare-participating hospital may be included in an optional and streamlined credentialing and privileging process.

- The rule defines a "distant-site telemedicine entity" as one that (1) provides telemedicine services; (2) is not a Medicare-participating hospital (therefore, a non-Medicare-participating hospital that provides telemedicine services would be considered a distant-site telemedicine entity); and (3) provides contracted services in a manner that enables a hospital or CAH using its services to meet all applicable CoPs, particularly those requirements related to the credentialing and privileging of practitioners providing telemedicine services to the patients of a hospital or CAH.

- To use this "delegated" or "by proxy" process, the hospital or CAH must have in place a written agreement with the distant site. The agreement must specify that the individual physician or practitioner who provides the telemedicine services be privileged at the distant site, and the distant site must give the hospital or CAH a current list of the distant-site physician's or practitioner's privileges.

- In addition, the agreement must require the distant site to provide the hospital or CAH with evidence of an internal review of the distant-site physician's or practitioner's performance. Further, the hospital or CAH must send the distant site information for use in the distant site's periodic appraisal of the distant-site physician or practitioner. This information must include, at a

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minimum, all adverse events that resulted from the telemedicine services and any complaints the distant site has received about the physician or practitioner.

The final rule requires Medicare-participating hospitals and CAHs to review and, if necessary, revise their medical staff bylaws, rules and regulations. They will also need to ensure that they have in place telemedicine services agreements that meet the requirements of the new rule. Hospitals and CAHs that, in the past, have not used “delegated” or “by proxy” credentialing and privileging for telemedicine services may want to consider implementing this process as a means to reduce expense and administrative burden.

Squire, Sanders & Dempsey’s lawyers have significant experience in developing agreements, policies and procedures for telemedicine services, and we routinely advise on matters related to credentialing, privileging and reimbursement for these services. We are available to assist clients in structuring distant-site agreements and medical staff policies and procedures to support credentialing and privileging by proxy. For more information, please contact one of the lawyers listed in this Alert.

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