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CMS FINALIZES REVISIONS TO THE CAH COPS

On May 10, 2012, the Centers for Medicare and Medicaid Services ("CMS") released an advance copy of a final rule ("Final Rule") revising several critical access hospital ("CAH") Medicare conditions of participation ("CoPs"). These changes, together with a number of changes to the hospital CoPs, will benefit hospitals of both types by allowing for increased flexibility in a number of areas.

The Final Rule is scheduled to be published in the May 16, 2012 Federal Register and will be effective on or about July 16, 2012. A summary of the changes to the hospital CoPs is available here.

The most significant change in the Final Rule affecting CAHs is the elimination of the requirement that a CAH provide certain services directly, that is through the use of personnel employed by the CAH. The current CAH CoPs, located at 42 CFR §485.601 et. seq., define "direct services" as those services provided by staff employed by the CAH, not through arrangements or agreements. The CAH CoPs go on to require that the CAH provide the following as direct services: (1) diagnostic and therapeutic services commonly furnished in a physician's office or at another entry point in the health care delivery system; (2) select basic laboratory services (chemical examination of urine by stick or tablet method, hemoglobin/hematocrit, blood glucose, stool specimen examinations for occult blood, pregnancy tests and primary culturing for transmittal to a certified lab); (3) radiology services; and (4) emergency procedures as a first response to common life-threatening injuries and acute illness. The current requirements present a number of staffing challenges for rural providers and also restrict CAHs from expanding their services within the community through arrangements with other hospitals or health care service providers.

In the Final Rule, CMS eliminates the requirement that CAHs provide these services directly and removes the definition of and references to "direct services" from the CAH CoPs entirely. However, CMS expects CAHs to ensure that any of these services provided under arrangement are done so in a manner that facilitates timely diagnosis and treatment of patients, which in their view means, at a minimum, on-site at the CAH.

Additional changes include the following:

- Modifying the definition of Clinical Nurse Specialist to make it consistent with the Social Security Act and include a reference to compliance with state licensing laws and regulations.
- Clarifying that surgical services are an optional CAH service.

Given the changes in the Final Rule, CAHs should evaluate whether the hospital and surrounding community could be better served through the use of services provided through arrangements and should consider how staffing might be improved with the addition of contract personnel in certain circumstances.

If you have any questions or would like additional information about this topic, please contact:

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