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HEALTH CARE LAW
FOULSTON SIEFKIN ISSUE ALERT

Finally, Some Good Regulatory News for Providers: CMS Revises Hospital and CAH Conditions of Participation

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On May 16, 2012, the Centers for Medicare & Medicaid Services (CMS) published Final Rules revising the requirements that hospitals and critical access hospital (CAHs) must satisfy in order to participate in the Medicare and Medicaid programs. These revisions will eliminate outdated, unnecessary, and burdensome rules, reducing the overall procedural burdens on providers. Although some questions related to implementation will not be answered until CMS revises the Interpretative Guidance for hospitals and CAHs, these revisions are certainly a step in the right direction to give providers some much-needed regulatory relief. Key provisions are summarized below:

Single Governing Body for Multi-Hospital Systems

Multi-hospital systems may choose to have one governing body oversee the care provided by all of the hospitals in the system. The governing body must include at least one member of the medical staff. CMS specifically clarified in the Final Rules that it is "not requiring that the governing body include a member of each separately certified hospital's medical staff, so long as at least one governing body member is a member of the medical staff of one system hospital."

Reporting of Restraint-Related Patient Deaths

CMS modified the reporting requirements related to patient deaths involving the use of soft, two-point wrist restraints and no use of seclusion. Recognizing that patient deaths are generally incidental to the use of these types of restraints, CMS will no longer require providers to report to CMS such patient deaths involving the use of soft, two point wrist restraints. Now, providers are required to maintain a hospital log and must make this log available to CMS upon request. The log must contain the following information: the patient's name, date of birth, date of death, attending physician, primary diagnosis(es), and medical record number. The log must be completed within seven days of the patient's death. For deaths involving all other types of restraints, CMS has retained the current reporting requirements.

Administration of Blood Transfusions

CMS eliminated the requirement for non-physician personnel to possess special training in administering blood transfusion and intravenous medications.

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Non-physician personnel may administer blood transfusions and intravenous medications in accordance with State law and approved medical staff bylaws, rules and regulations, and policies and procedures.

Verbal Orders

CMS eliminated the overly burdensome requirement that the ordering physician authenticate all verbal orders within 48 hours. However, CMS has not changed its position that hospitals should minimize the use of verbal orders.

Authentication of Orders

CMS has made permanent its temporary requirement that all orders (including verbal orders) must be dated, timed, and authenticated by either the ordering practitioner or another practitioner who is responsible for the patient's care and who is authorized to write orders in accordance with hospital policy and State law.

Standing Orders

Hospitals may use pre-printed and electronic standing orders and such orders must be approved by the medical staff, nursing personnel, and pharmacy personnel, as appropriate. The patient's medical record must contain the standing order that was used. Notably, CMS cautioned "that some insurers, including Medicare, might not pay for the services provided because of these orders."

Nursing Care Plan

Hospitals may integrate the nursing care plan into a single interdisciplinary care plan. Hospitals do not have to maintain a stand-alone nursing care plan.

Outpatient Services Director

CMS removed the outdated requirement for a single Director of Outpatient Services position that oversees all outpatient services. Hospitals may utilize separate directors for individual outpatient departments to satisfy this requirement.

CAHs Provision of Services

CMS eliminated the requirement that CAHs provide certain services directly rather than through under arrangement contracts. CAHs may now offer the following services to patients through under arrangements: (1) diagnostic and therapeutic services; (2) laboratory services; (3) radiology services; and (4) emergency procedures. CMS noted that it expects CAHs to continue to provide services that facilitate the timely diagnosis and treatment of patients, and that this is "best achieved" by CAHs providing services on-site at the hospital, whether through CAH employees or under arrangement. At a minimum, CMS expects the services listed above to be provided by the CAH on-site.

These regulations are effective as of July 16, 2012. CMS also clarified several existing requirements for hospital and CAHs. The full text of the Final Rules can be found at http://www.federalregister.gov/articles/2012/05/16.

For Further Information

If you have questions or want more information, you should contact your legal counsel to ensure compliance with the Final Rules. If you do not have regular counsel, Foulston Siefkin LLP would welcome the opportunity to work with you to specifically

meet your business needs. Brooke Bennett Aziere is available to assist you. Brooke Bennett Aziere can be reached at 316.291.9768 or **baziere@foulston.com.** If you are looking for general health care counsel you may contact Scott Palecki at 316.291.9578 or **spalecki@foulston.com**.

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