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CMS NEEDS YOUR FEEDBACK NEW RULE REGARDING HOSPITAL BOARD COMPOSITIONS

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On May 16, 2012, the Centers for Medicare and Medicaid Services (“CMS”) published revised regulations that change certain requirements for Medicare and Medicaid participating hospitals. These requirements, referred to as the Conditions of Participation (“CoP”), serve as the basis for hospital surveys to determine whether a hospital qualifies for a provider agreement under Medicare or Medicaid. These new regulations go into effect on July 16, 2012.

This Alert addresses a new CoP that raises significant concerns; this CoP will now require a hospital governing board to include a member of the medical staff. CMS is seeking feedback on this CoP from hospitals that have publically elected or government appointed boards (referred to herein as “Government Sponsored Hospitals”). The new CoP provides, in its entirety, as follows:

42 C.F.R. §482.12 - Condition of participation: Governing body

There must be an effective governing body that is legally responsible for the conduct of the hospital. If a hospital does not have an organized governing body, the persons legally responsible for the conduct of the hospital must carry out the functions specified in this part that pertain to the governing body. The governing body (or the persons legally responsible for the conduct of the hospital and carrying out the functions specified in this part that pertain to the governing body) must include a member, or members, of the hospital’s medical staff¹.

Absent appropriate and enforceable guidance from CMS, the CoP will be potentially problematic for Government Sponsored Hospitals which have little control over the selection of their governing boards. We spoke to representatives of CMS about the new CoP, and CMS is now aware of the problem the CoP presents for Government Sponsored Hospitals. Accordingly, CMS will issue interpretative guidance in the future and has invited the industry to identify its concerns. Also, CMS advised us that it intends to take the following approach:

If the applicable state law interferes with a hospital’s compliance with the new regulation, non-compliance will be excused.

For further information or questions relating to this, please contact any of the Healthcare Group members.

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¹The medical staff may include doctors and “other categories of non-physician practitioners determined as eligible for appointment by the governing body.”
42 C.F.R. §482.22