Recent Changes to Medicare’s Conditions of Participation for Hospitals and to Discharge Notice Requirements

On November 27, 2006, the Centers for Medicare and Medicaid Services (“CMS”) published two final rules applicable to hospitals participating in the Medicare program. The first final rule revises certain requirements in the hospital conditions of participation in the Medicare program (“CoPs”), including changes to the requirements for completion of history and physical examinations, authentication of verbal orders, securing medications and completion of post-anesthesia evaluations. This final rule becomes effective January 26, 2007. The second final rule revises requirements for notifying hospital inpatients who are Medicare beneficiaries of their discharge appeal rights. This change becomes effective July 1, 2007.

CMS revised the CoPs detailed above in response to input from providers that the existing regulations no longer reflected current health care practices and were unduly burdensome. The changes implemented to each CoP generally provide hospitals with greater flexibility to adopt appropriate policies and procedures. The amended CoPs and the revisions to the discharge notice requirements are addressed in detail below.

Completion of History and Physical Examinations

The final rule concerning completion of history and physical examinations (“H&P”) allows greater flexibility for practitioners and hospitals. The final rule, as interpreted in light of CMS’s comments in the preamble to the final rule, provides that:

- An H&P can be completed 30 days prior to an admission. Previously, pre-admission H&Ps were limited to those completed 7 days prior to admission. Effective January 26, 2007, the H&P must be on the medical record within 24 hours after admission. If the patient is undergoing a nonemergent surgery, however, the H&P must be in the medical record prior to the procedure.
- The author of the H&P no longer has to have staff privileges at the hospital, provided that the practitioner is appropriately licensed and hospital policy allows a non-privileged practitioner to author an H&P.
- If a preadmission H&P is to be used, the patient’s medical record must be updated within 24 hours of admission, noting any changes in the patient’s condition. If there has been no change to the patient’s condition, the practitioner need only include a note stating that the practitioner has reviewed the H&P, examined the patient and detected no change in the patient’s medical condition.
- The attending physician may delegate the H&P and appropriate updates to other practitioners, but the physician retains ultimate responsibility for completion.

Authentication of Verbal Orders

The final rule reinforces CMS’s general policy of discouraging the routine use of verbal orders because of patient safety concerns. Nevertheless, CMS recognized that use of verbal orders is necessary and will continue, especially in certain practice settings such as the emergency department. The final rule clarifies the documentation requirements for all medical record entries, including verbal orders:

- All medical record entries, including verbal orders, must be dated, timed and authenticated by the ordering practitioner. Previously, CMS did not require the time of all medical record entries to be included.
- All verbal orders must be authenticated within 48 hours, unless an applicable state law sets a time frame for authentication. If there is an applicable state law, the state law must be followed.
• For the next 5 years, all orders including verbal orders may be dated, timed and authenticated by the ordering practitioner or another practitioner who is responsible for the care of the patient and is authorized by the hospital to write orders. Thus, physicians who take over the care of a colleague’s patient or a nurse practitioner or physician assistant who can write orders may authenticate the prescribing practitioner’s orders.

**Securing Medications**

The final rule requires that all drugs and biologicals be kept in secure areas, and locked when appropriate. By adding the term “when appropriate,” CMS intended to provide hospitals with greater flexibility to determine which noncontrolled drugs and biologicals need to be stored in locked areas versus which can be stored in secured and monitored areas that are only accessible to authorized hospital personnel. In the preamble to the final rule, CMS offers the following guidance to assist hospitals in developing policies related to the storage of noncontrolled drugs and biologicals:

- All noncontrolled substances should be locked when a patient care area is not staffed.
- When individual operating rooms are closed or otherwise not in use, nonmobile carts containing drugs and biologicals should be locked, and mobile carts containing drugs and biologicals should be placed in a locked room.
- When an area is staffed, there should be easy access to the noncontrolled substances when necessary for patient care, but such substances should be monitored to minimize the risk of tampering and diversion.
- Security measures must be tightened if there is evidence of tampering or diversion of any drugs or biologicals.

**Completion of the Post-Anesthesia Evaluation**

The final rule permits post-anesthesia evaluation for inpatients to be completed and documented within 48 hours after surgery by any individual qualified to administer anesthesia, as opposed to only the individual who actually administered the anesthesia. Individuals qualified to administer anesthesia include: (i) a qualified anesthesiologist; (ii) a doctor of medicine or osteopathy; (iii) a dentist, oral surgeon or podiatrist who is qualified to administer anesthesia under state law; (iv) a certified registered nurse anesthetist under appropriate supervision; and (v) an anesthesiologist’s assistant under appropriate supervision. CMS implemented this change to provide hospitals with more flexibility related to post-anesthesia evaluations while maintaining patient safety. The final rule explains that the 48-hour timeframe for completion and documentation of the post-anesthesia evaluation is an outside parameter; individual patient risk factors may dictate that it be completed in a shorter time.

**Provision of Discharge Notices**

The final rule addressing discharge notices requires that hospitals implement a two-step discharge notice process for all Medicare beneficiaries who are hospital inpatients. Specifically, the final rule requires the following:

- The hospital must provide the “Important Message from Medicare” notice, which describes Medicare beneficiaries’ rights (including discharge appeal rights), within two calendar days of admission. The beneficiary or his/her representative must sign and date the notice to indicate that he/she has received it and can comprehend its comments.
- The hospital must present a copy of the signed notice to the beneficiary prior to discharge as far in advance of discharge as possible, but not more than two calendar days before discharge. (This follow-up notification is not required if the first notice was given within two calendar days of discharge.)
- If the beneficiary requests review of the discharge decision by the applicable Quality Improvement Organization, the hospital must also deliver a detailed notice to the beneficiary that explains why services are no longer covered, any applicable Medicare coverage rules, specific facts to support applicability of the coverage rules, and any other information required by CMS.

CMS will release a revised “Important Message from Medicare” notice prior to the July 1, 2007 effective date for this final rule.

**Conclusion**

The changes to the Medicare CoPs for history and physical examinations, authentication of verbal orders
and post-anesthesia evaluations now allow hospitals to meet clinical evaluation and documentation requirements through a variety of health care practitioners, thus recognizing today’s reality that various health care practitioners, and not just the attending physician, play an important role in providing hospital services. Additionally, the revisions to the pharmaceutical rules likely will create a more efficient working environment in certain hospital departments.

With these changes to the CoPs and the discharge notice requirements, hospitals must make certain operational and administrative changes. Practitioners and administrative staff members will need to be educated regarding these new rules. Additionally, hospital policies and procedures concerning documentation, nursing, medical staff privileges, storage of noncontrolled drugs and biologicals and provision of the Important Message from Medicare notice to Medicare beneficiaries will need to be revised to ensure compliance with the final rule. Finally, hospitals should evaluate their electronic health record systems (or any potential system) to ensure that they can meet the requirement of timing every medical record entry.

If you have any questions regarding the changes to the CoPs described in this memo, please do not hesitate to call Jennifer Breuer, Bridget Kevin, Melissa January, Julie Rusczek or any of our Health Law Department attorneys listed below.

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