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Medical Staff Bylaws: Meeting new Medicare Conditions of Participation and Joint Commission Requirements

Complying with CMS Changes and Updating Hospital Governance Documents

September 11, 2014

Richard D. Barton

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OVERVIEW

A. CMS Regulations and Joint Commission Standards for Medical Staffs and Medical Staff Bylaws

1. 42 CFR § 482.12- Conditions of Participation- Governing Body

a. The hospital must have an effective Governing Body legally responsible for the conduct of the hospital as an institution

b. Standard: Medical Staff - The Governing Body must:

- i. Assure that the medical staff has bylaws
- ii. Approve medical staff bylaws and other medical staff rules and regulations
- iii. Ensure that the medical staff is accountable to the Governing Body for the quality of care provided to patients
- iv. Ensure the criteria for selection are individual character, competence, training, experience, and judgment, and
- v. Ensure that under no circumstances is the accordance of staff membership or professional privileges in the hospital dependent solely upon certification, fellowship, or membership in a specialty body or society

OVERVIEW – cont'd

2. 42 CFR § 482.22 Conditions of Participation: Medical Staff
 - a. The hospital must have an organized medical staff that operates under bylaws approved by the Governing Body and is responsible for the quality of medical care provided to patients by the hospital
 - b. § 482.22(c) – The medical staff must adopt and enforce bylaws to carry out its responsibilities
 - c. 42 CFR § 482.22(c) The Bylaws must:
 - i. Be approved by the Governing Body
 - ii. Include a statement of the duties and privileges of each category of the medical staff (e.g., active, courtesy, etc.)
 - iii. Describe the organization of the medical staff
 - iv. Describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body
 - v. Include requirements for history and physicals to be completed no more than 30 days before or 24 hours after admission, etc.
 - vi. Include criteria for determining the privileges to be granted to individual practitioners
 - (a) this provision includes requirements for distant-site physicians and practitioners requesting privileges to furnish telemedicine services

OVERVIEW – cont'd

3. Joint Commission Standards

- a. MS 01.01.01 CAH & HAP
- b. Elements of performance 12-36 address medical staff and medical staff bylaws



OVERVIEW – cont'd

B. CMS Final Rule Issued May 12, 2014 - Amendments to Conditions of Participation (CoP's) for Hospitals and Critical Access Hospitals

1. Background - 2012 Final Regulations

- a. President Obama Executive Order 13563 - “Improving Regulations and Regulatory Review”
- b. CMS adopts “Regulatory Provisions to Promote Efficiency, Transparency and Burden Reduction”
- c. Two Provisions Regarding Medical Staffs Create Controversy
 - i. Hospital Board must include at least one member of the medical staff
 - ii. Implied interpretation of 42 CFR § 482.22 requirement that each hospital within a multi-hospital system have an independent medical staff
- d. June 15, 2012 - CMS issues instructions to surveyors to hold requirements pending further evaluation

OVERVIEW – cont'd

2. May 12, 2014 Amendments

- a. CMS clarifies that hospital medical staffs may also include, consistent with State laws re scope of practice, other categories of physicians and non-physician providers- see 42 CFR § 482.12(c)
- b. Addition of provision to the Medical Staff standard of the Governing Body CoP 42 CFR § 482.12
 - i. Requires that hospital governing body directly consult periodically with the individual responsible for the organized medical staff of the hospital, or his or her designee
 - ii. For multi-hospital system using single governing body- the governing body must consult with *each* medical staff within the system
 - iii. Removes requirement for a medical staff member, or members, to be on a hospital governing body

OVERVIEW – cont'd

- c. Reinterpreting 42 CFR § 482.22 to allow for a unique medical staff for each hospital, or for a *unified and integrated* medical staff shared by multiple hospitals within hospital system
 - i. Medical staff members at each separately certified hospital in a system must vote either to participate in a unified and integrated medical staff structure *or* to opt out of such a structure
 - ii. Unified and Integrated medical staff must have bylaws, rules and requirements that describe its processes for:
 - (a) self-governance
 - (b) appointment, privileging and oversight
 - (c) peer review policies and due process rights guarantees, and
 - (d) a process for the members of each separately certified hospital to be advised of their rights to opt out of the unified and integrated medical staff structure by majority vote
 - iii. Unified and Integrated medical staff must be established in a manner that takes into account each hospital's unique circumstances, patient population and services offered in each hospital



OVERVIEW – cont'd

- iv. Unified and Integrated medical staff must give due consideration to the needs and concerns of all members of the medical staff and *have mechanisms in place to assure due consideration* of issues localized to particular hospitals
- d. Practitioners permitted to order hospital outpatient services
 - i. Revises Outpatient CoP to allow practitioners who are not on the hospital medical staff to order hospital outpatient services
 - ii. Must be authorized by medical staff and authorized by State law
- e. Critical Access Hospitals (CAH) - eliminates requirement that a CAH develop its policies with the “advice of at least one member who is not a member of the CAH staff”
- f. Hospital Registered Dietician privileges- permits registered dietitians and other clinically qualified nutrition professionals to be privileged to order patient diets under Hospital CoP's



OVERVIEW – cont'd

C. The Joint Commission - MS 01.01.01

1. 2011 Revisions - Medical Staff Bylaws must address self-governance and accountability to the Governing Body
2. 2014 - The Joint Commission Revisions effective September 29, 2014 Align with CMS Changes
 - a. Hospital Standard MS 01.01.01
 - i. EP 37- When a multi-hospital system has a unified and integrated medical staff, the bylaws must describe the process by which members of medical staffs at each separately accredited hospital are advised of their right to opt out of the unified and integrated medical staff structure after a majority vote



OVERVIEW – cont'd

- b. Hospital Standard MS 01.01.05- Multihospital systems can choose to establish a unified and integrated medical staff in accordance with state and local laws
 - i. Four New Elements of Performance address the requirements that must be met by a multihospital system that chooses a unified and integrated medical staff. The multihospital system must demonstrate:
 - (a) EP 1- that the medical staff members of each hospital have voted by majority to either accept the unified and integrated medical structure or opt out of the structure and maintain a distinct medical staff for their hospital
 - (b) EP 2- that the unified and integrated medical staff takes into account each member hospital's unique circumstances and any significant differences in patient populations and services offered in each hospital
 - (c) EP 3- the unified and integrated medical staff establishes and implements policies and procedures to make certain that the needs and concerns expressed by members of the medical staff at each of its separately accredited hospitals, regardless of practice or location, are given due consideration
 - (d) EP 4- The unified and integrated medical staff must have mechanisms in place to make certain that issues localized to particular hospitals within the system are duly considered and addressed

OVERVIEW – cont'd

- c. Hospital and Critical Access Standard PC 02.01.03- Outpatient services ordered by practitioners not appointed to the medical staff
 - i. EP 1- Prior to providing care, treatment and services, the hospital obtains orders (verbal or written) from a licensed independent practitioner
 - ii. JC Note: *Outpatient Services may be ordered by a practitioner not appointed to the medical staff as long as he or she meets the following:*
 - (a) Responsible for the care of the patient
 - (b) Licensed in the state where he or she provides care to the patient
 - (c) Acting within his or her scope of practice
 - (d) Authorized in accordance with state law and policies adopted by the medical staff and approved by the governing body to order the applicable outpatient services
- d. Telemedicine

THANK YOU!!!!

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