

Health Care Bulletin



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Update on Rules for Telemedicine Privileges

In the midst of The Joint Commission's revisions to its telemedicine privileges standards, the Centers for Medicare & Medicaid Services ("CMS") published a proposed rule in May that would revise the current conditions of participation ("CoPs") for both hospitals and critical access hospitals regarding telemedicine services.

The Joint Commission ("TJC") had previously issued new changes to TJC Standards MS.13.01.01 (Telemedicine) and LD.04.03.09 (Oversight of Care, Treatment and Services Provided Through Contractual Agreement) that were to become effective July 15, 2010, for Medicare-participating hospitals. However, after CMS issued its proposed rule, TJC on June 9, 2010, announced the effective date of these changes was being delayed until March 2011.

CMS regulations currently require hospitals and critical access hospitals to privilege practitioners providing telemedicine services as if the practitioner were on-site. In the present CoPs there is no mechanism for "privileging by proxy," such as is permitted by the TJC telemedicine standard. In the preamble to the newly proposed regulations, CMS notes that, "One TJC policy that has been in direct conflict with the CoPs has been TJC's practice of permitting 'privileging by proxy' ... In short, TJC privileging by proxy standards allowed for one TJC-accredited facility to accept the privileging decisions of another TJC-accredited facility. Hospitals that have used this method to privilege distant-site medical staff technically did not meet CMS requirements that applied to other hospitals even though they were TJC-accredited."

The proposed rule would address this issue by making changes to 42 CFR 482.12 and 42 CFR 482.22¹ that would make it permissible for the medical staff to "rely upon information furnished by the distant-site hospital when making recommendations on privileges" for individual distant-site practitioners providing telemedicine services if:

1. The distant-site is a Medicare participating hospital.
2. The practitioner has privileges at the distant-site hospital and the distant-site provides a current list of the practitioner's privileges to the originating-site.
3. The practitioner holds an appropriate state license in the state of the originating-site hospital.
4. The originating-site hospital conducts reviews of the practitioner's performance in the exercise of telemedicine privileges and sends the distant-site hospital such performance information for use in the periodic appraisal of the practitioner. At a minimum, this information must include all adverse events that result from the telemedicine services provided by the practitioner to patients at the originating-site and all complaints received by the originating-site about the practitioner.

Additionally, for the forgoing to apply under the proposed rule, the telemedicine services would need to be furnished under an agreement with a Medicare-certified hospital and that agreement must specify that it is the distant-site hospital's responsibility to conduct credentialing of the telemedicine practitioners in accordance with the CoPs.

It should be noted that unlike the TJC standards, CMS makes no distinction between telemedicine and tele-interpretive services. Also, note that the rule only permits the use of information from Medicare-certified hospitals, it does not permit hospitals to rely on information from non-hospital entities, such as teleradiology companies. However, the proposed CMS rule does not appear to affect the ability to use a credentialing verification organization when appropriate. The new rule is still only proposed, but if it is finalized Medicare-participating hospitals will be required to follow this rule.

Footnote

¹The proposed rule also makes similar changes to 42 CFR 485.616 and 42 CFR 485.641, applicable to critical access hospitals.

This Bulletin was prepared by Allen Killworth and Kim Parks. Please contact any member of the Bricker & Eckler LLP [Health Care Department](#) for more information. This and previous Bulletins may be accessed on our [Publications Webpage](#).

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