CMS final rule changes provider and supplier conditions of participation

May 15, 2014

On May 12, 2014, the Centers for Medicare & Medicaid Services (CMS) issued its final rule reducing requirements under several Medicare Conditions of Participation (CoPs), including CoPs for medical staffs, governing boards and certain operational areas.

The 2014 final rule follows a proposed rule issued by CMS on February 7, 2013. The final rule is effective July 11, 2014, except for changes to Part 483 affecting long-term care sprinkler systems, which were effective May 12, 2014.

Highlights of the key changes to the CoPs in the final rule are:

Governing Body. CMS affirmed its 2013 proposed rule requiring the governing body to consult with the individual assigned the responsibility for the organization and conduct of the hospital's medical staff, such as the medical staff president, periodically throughout the calendar/fiscal year. These consultations are expected to relate to the quality of medical care provided to patients of the hospital.

Medical Staff. CMS reversed its earlier interpretation and now will permit a multi-hospital system to have a single, unified medical staff. A majority of the medical staff members of each individually certified hospital must vote in favor of, and be able to later opt-out of, the unified medical staff. In addition, CMS clarified that the medical staff must include doctors of medicine or osteopathy, and also may include certain other types of physicians and non-physician providers.

Radiological Services in Ambulatory Surgical Centers. CMS reduced the oversight and supervision requirements that ambulatory surgical centers (ASCs) must meet to provide radiological services by allowing individuals other than radiologists to provide the supervision. Previously, ASCs have been required to meet the hospital CoPs for radiological services, which require a radiologist to supervise radiological services

Hospital Registered Dietitian Privileges. CMS gave hospitals additional flexibility to privilege qualified nutrition professionals — including registered dieticians and other nutrition professionals in accordance with state law and medical staff requirements — to order patient diets. The current rule permits only a practitioner or practitioners responsible for the care of the patient to order patient diets.

Nuclear Medicine Services. CMS reduced hospital oversight and supervision requirements for in-house preparation of radiopharmaceuticals due to the burden of meeting the current "direct supervision" standard, which requires a registered pharmacist or doctor of medicine or osteopathy to be physically present in the hospital and immediately available during the preparation of all radiopharmaceuticals.

Practitioners Permitted to Order Hospital Outpatient Services. CMS affirmed its prior interpretation regarding who may order outpatient services. Practitioners who are not on a hospital's medical staff may now order hospital outpatient services for their patients if they are properly licensed and acting within their scope of practice under state law and authorized by the medical staff.

Hospital Reclassification of Swing-Bed Services. CMS revised the CoP requirements for swing-bed services by relocating this CoP to classify swing beds as an optional service. This will allow an accredited hospital's compliance with swing bed requirements to be

evaluated by a CMS-approved accrediting organization, thereby eliminating the need for an additional state agency survey specifically for swing bed approval.

CAH Provision of Services. CMS eliminated the current requirement that a critical access hospital (CAH) develop its patient care policies with the advice of at least one member who is not a member of the CAH staff.

RHC/FQHC Definition of Physician. To avoid confusion in the provider community, CMS revised the definition of a "physician" in the rural health center (RHC)/federally qualified health center (FQHC) regulations to conform to the definition of a "physician" used for Medicare payment and Medicare agreements with RHCs and FQHCs. The CoPs now define "physician" as a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the state in which the function is performed, and within limitations as to specific services furnished – a doctor of dental surgery or of dental medicine, a doctor of optometry, a doctor of podiatry or surgical chiropody or chiropractor.

CAH/RHC/FQHC Physician Presence. CMS removed the requirement that CAHs, RHCs and FQHCs have a physician present once every two weeks. However, CMS still requires that CAHs, RHCs and FQHCs have a physician onsite for sufficient periods of time depending on the needs of the facility and its patients.

The CoP changes for medical staff and the hospital governing body are further addressed in this bulletin from May 13, 2014.

Authors