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## CMS REMOVES BARRIER TO TELEMEDICINE IN LTACHS

On May 2, 2011, CMS released a final rule that will substantially reduce the burden of credentialing and privileging physicians and practitioners who provide telemedicine services to hospitals, including long-term acute care hospitals ("LTACHs").<sup>1</sup> The rule will implement changes to the Medicare Conditions of Participation ("CoPs") and bring the CoPs more in line with the telemedicine requirements of The Joint Commission ("TJC"). Currently, the CoPs govern the credentialing and privileging process for physicians and practitioners providing telemedicine services, defined by CMS as "the provision of clinical services to patients by practitioners from a distance via electronic communications."<sup>2</sup> The CoPs require the governing body of each hospital to make independent privileging decisions by examining and verifying the credentials of each practitioner. CMS recognizes that this requirement is both "duplicative and burdensome" for hospitals and imposes unnecessary barriers to the use of telemedicine. While the new rule does not go as far as allowing "privileging by proxy," it does permit hospitals to rely on the credentialing and privileging process of the distant-site facility, provided that the hospital and the distant-site facility have an agreement in place and the distant-site meets CMS standards (even if it is not a Medicare-participating provider).

Prior to July 15, 2010, hospitals that were accredited by TJC were deemed to have met the Medicare CoPs, including the credentialing and privileging requirements, under TJC's statutory deeming authority. TJC permitted "privileging by proxy," which allowed a TJC-accredited hospital to provide telemedicine services without credentialing and privileging each remote physician, provided that the remote physician's hospital was also accredited. This process technically violated the CoPs, but largely went uncorrected. Section 125 of the Medicare Improvements for Patients and Providers Act of 2008 terminated the statutory recognition of TJC's hospital accreditation program.<sup>3</sup> As a result, TJC-accredited hospitals would now be required to conform to the CoPs.

The final rule takes effect on July 5, 2011 and will relieve hospitals (including TJC-accredited hospitals) from the burden of individually evaluating each practitioner who will provide telemedicine services, by allowing those hospitals to rely upon the credentialing and privileging decisions made by a distant-site hospital or distant-site telemedicine entity. In order to take advantage of the streamlined procedures, hospitals implementing telemedicine services furnished by a distant-site hospital must have a written agreement requiring that hospital to meet certain credentialing and privileging requirements of the CoPs. In addition, the individual physician or practitioner must be privileged by the

distant-site facility and the distant-site facility must provide a current list of the privileges granted; the physician or practitioner must be licensed in the State in which the hospital implementing telemedicine services is located; and the hospital implementing the telemedicine services must have access to the internal review of the distant-site physician's or practitioner's performance, including adverse events and complaints.

Significantly, CMS distinguishes between a distant-site hospital, which participates in Medicare, and a distant-site telemedicine entity, which is not a Medicare-participating hospital but provides telemedicine services in a manner that enables a hospital using its services to meet all applicable CoPs. This distinction means that an entity can provide telemedicine services to an LTACH or other hospital, even if it does not participate in Medicare. Hospitals implementing telemedicine services provided by a distant-site telemedicine entity must have a written agreement specifying that such entity will provide contracted services in a manner that allows the hospital to comply with all applicable CoPs, including the credentialing and privileging requirements.

By streamlining the credentialing and privileging process for physicians and practitioners providing telemedicine services, CMS has removed a costly and time-consuming barrier for hospitals using or considering remote physician services. LTACHs that do not already use telemedicine to provide patient care may want to consider whether telemedicine services may improve access to and quality of care by allowing immediate physician intervention around the clock to maximize treatment efficacy and avoid preventable negative outcomes. For example, the Good Shepherd Penn Partners Specialty Hospital at Rittenhouse implemented telemedicine to monitor its ICU, significantly reducing the incidence of ventilator-associated pneumonia.<sup>4</sup>

LTACHs and other hospitals currently using telemedicine services will need to implement written agreements with distant-site facilities (or review existing agreements) to ensure compliance with the new rule. For more information, please contact us at the phone number or email address above.

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1. 76 Fed. Reg. 25550 *et seq.* (May 5, 2011).
  2. 76 Fed. Reg. at 25551.
  3. Pub. L. 110-275, July 15, 2008.
  4. Presentation available online [here](#) (PDF).

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## About Us

The Law Offices of Jason M. Healy PLLC is a health care law firm that focuses exclusively on legal issues affecting health care providers. We help health care providers and their trade associations understand Medicare and Medicaid laws and regulations. We also represent health care providers in reimbursement audits, appeals, and litigation. Located in Washington, DC, just minutes from the Department of Health and Human Services, Congressional offices, and the White House, we are well positioned to provide legal support for advocacy efforts. Our principal, Jason M. Healy, is a health care lawyer with over 14 years of experience with the array of legal issues facing health care providers.

Please feel free to reach us at the phone number or email address above if we can be of assistance. We look forward to working with you and your company.

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