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CMS Proposes Revisions to Conditions of Participation for Medicare & Medicaid

On March 24th the Centers for Medicare & Medicaid Services (“CMS”) released a proposed rule revising the conditions of participation that hospitals must meet to participate in the Medicare and Medicaid programs. In general, the proposed rule would revise four (4) requirements in the current conditions of participation: (i) completion of history and physical examinations, (ii) authentication of verbal orders, (iii) securing medications, and (iv) completion of post-anesthesia evaluations.

With respect to physical examinations, the proposed rule would expand the current requirement for completion of a medical history and physical examination from “no more than 7 days before or 24 hours after admission” to “no more than 30 days before or 24 hours after admission”. The rule would also expand the types of medical professionals who can conduct the examinations. Previously such exams typically were required to be conducted by a physician, however, the proposed rule would also allow “other qualified individuals,” as designated by state law, to conduct such exams.

CMS also proposed changes to the requirements for verbal orders. Although CMS wishes to keep the current requirement that all orders, including verbal orders, be dated, timed and authenticated promptly by the prescribing practitioner, the proposed rule would permit a temporary exception that would require the authentication of all verbal orders, but allow either the prescribing practitioner or another practitioner who is responsible for the care of the patient to authenticate the order. A time would be set within which orders must be authenticated. Specifically, all orders must be authenticated within the time frame required by state law or within 48 hours if state law does not provide a time frame.

With respect to securing medications, the proposed rule would eliminate the current blanket requirement that all drugs and biologicals must be kept in a locked and secure area. Those biologicals listed in Schedules II, III, IV and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 would need to be kept secured, however non-controlled drugs could be locked up “when appropriate.”

Finally, for post-anesthesia reports, the current requirements state that the person who administers the anesthesia must write the follow-up report, however, the proposed rule would permit “any individual qualified to administer anesthesia” to complete the report.

In sum, the proposed CMS rule would allow hospitals much greater flexibility in their day-to-day operations while maintaining appropriate patient safeguards. It is anticipated not only will hospitals applaud these efforts, but that they will also encourage CMS to revise other existing requirements to allow similar flexibility.

For more information on CMS’s proposed rule for hospital conditions of participation please contact Karen Harris, at 312-269-8931 or kharris@seyfarth.com, or Deborah Gordon, 312-781-8620 or dgordon@seyfarth.com.



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