New CMS Rule on Telemedicine Credentialing and Privileging

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This webinar is brought to by the Regulation, Accreditation, and Payment (RAP) Practice Group, and is co-sponsored by the Medical Staff, Credentialing, and Peer Review (MSCPR) Practice Group

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What are the Current Requirements?

- Hospital must have a credentialing and privileging process for ALL physicians and practitioners, including telemedicine practitioners
- Requires a hospital's medical staff to grant privileges even where a provider is not "on-site"
- Duplicative and burdensome process
Why Change?

- Flexibility, especially for rural hospitals and critical access hospitals
- Policy encouragement of innovative approaches to patient-service delivery
- Advancement of timely delivery of telemedicine
- Presidential Executive Order (January 18, 2011)
The New Rule

Hospitals and critical access hospitals may implement new credentialing and privileging processes for telemedicine practitioners by relying on the credentialing and privileging of such telemedicine practitioners by the "Distant Site" provider.
Breaking it Down—What is "Telemedicine?"

- "Provision of clinical services to patients by practitioners from a distance via electronic communications"
- Not necessarily "real time"—Under this definition telemedicine services can be simultaneous (i.e. teleICU) OR non-simultaneous (i.e. teleradiology)
- This is distinct from other definitions CMS uses for telemedicine
Breaking it Down—Who can be a "Distant Site?"

- Medicare-participating hospitals providing telemedicine services
- Non-Medicare-participating hospitals providing telemedicine services so long as they enable the "Providing Site" to meet the conditions of participation
- Other telemedicine entities providing telemedicine services (i.e. teleradiology providers, ASCs, physician practices, other telemedicine companies) so long as they enable the "Providing Site" to meet the conditions of participation
Breaking it Down—Who Can Be a "Providing Site"?

- Any Medicare-participating hospitals, regardless of facility size or location
- Any Medicare-participating Critical Access Hospital, regardless of facility size or location
- This is distinct from the types of facilities and locations of facilities that are eligible for payment coverage of telehealth services by CMS and other payors.
- Rural health clinics or federally qualified health clinics are not included—Subject to separate Medicare Conditions for Coverage
Breaking it Down—Must a "Providing Site" Rely?

- No, this is not a mandatory requirement rather a flexible alternative
- It is anticipated that many will take advantage of this alternative to self-credentialing and privileging of telemedicine practitioners
Breaking it Down—Written Agreement Between Providing Site and Distance Site

- A detailed written agreement is required to be in place if a Providing Site is to rely on the Distant Site's credentialing and privileging of its telemedicine providers.
- May consider waiting for release of the updated The Joint Commission accreditation standards.
- Written agreement may be requested by CMS for review.
Elements of The Agreement—

- Specify that "governing body" of the distant site must meet the existing Medicare Conditions of Participations (i.e. 482.12(a)(1) through (a)(7))
- Distant Sites that are not Medicare-participating hospitals, must also ensure that the telemedicine services are provided in a safe and effective manner consistent with the Provider Site's policies and standards
Elements of The Agreement—(cont.)

- Evidence of telemedicine practitioner's privileges
- State-based licensure requirements still apply
- Evidence of internal review of telemedicine practitioner's performance by Distant Site
- Reporting of performance appraisal of telemedicine practitioner by Providing Site to Distant Site, including adverse events and complaints received by Providing Site
Elements of The Agreement—(cont.)

- Confidentiality and Privacy elements in sharing data (protection of peer review information and other Federal and State requirements)
- Indemnification/Risk Sharing considerations
- Subcontracting for telemedicine services may necessitate additional provisions and diligence
Practical Implications
HYPOTHEticals – Community General

- Midnight Radiology: Off-hours Radiology Interpretation
  - Non-hospital
  - Non-Medicare certified
  - TJC Accredited

- Teledoc, Inc: Internist Evaluation and Treatment
  - Non-hospital
  - Non-Medicare certified
  - TJC Accredited

- AMC Neurohealth – Neurosurgical Services
  - Medicare Certified Hospital
  - TJC Accredited
Intersection with The Joint Commission accreditation standards

- TJC has different standards for “interpretive services” and “direct care” telemedicine — CMS does not.

- Both CMS and TJC permit the distant site to be either a hospital or another entity, but:
  - TJC requires a non-hospital distant site to be a TJC-accredited ambulatory care entity – CMS does not.
  - Under current TJC standards “Medicare deemed-status” hospitals may not rely on distant site credentialing for “direct care” telemedicine. (This is expected to change prior to the effective date of the new regulations).

- The CMS and TJC requirements for non-hospitals are similar, but not identical, and both sets of standards must be consulted.
CMS Standards

- Three Options:
  - Full credentialing by providing site.
  - Reliance on distant site Medicare-certified hospital.
  - Reliance on distant site telemedicine entity.

- Requirements for distant site Medicare-certified hospital:
  - Written agreement
  - Current list of privileged practitioners with scope of privileges.
  - Licensure for each practitioner in the providing hospital state.
  - Providing site has evidence of distant site’s internal performance review of each practitioner’s exercise of privileges.
  - Providing site sends performance information, including “adverse events” relating to telemedicine, and all complaints received about the practitioner.
CMS Standards (cont.) – Non-hospital entities

- Requirements for distant site non-hospital entity:
  - Written agreement that clearly identifies the scope of services provided and assures that they are being provided in a “safe and effective manner.”
  - Credentialing and privileging processes that meet the standards for Medicare-participating hospitals (see Slide*).
  - Current list of privileged practitioners with scope of privileges.
  - Licensure for each practitioner in the providing hospital state.
  - Evidence of distant site’s internal performance review of each practitioner’s exercise of privileges.
  - Providing site sends performance information, including “adverse events” relating to telemedicine, and all complaints received about the practitioner.
CMS Standards (cont.) – Non-hospital entities (Slide*)

- Basic credentialing requirements for non-hospitals:
  - The governing body must:
    - Determine the *categories of practitioners* eligible for medical staff.
    - Appoint members after considering recommendations of existing members of medical staff.
    - Assure that the medical staff has bylaws.
    - Approve the medical staff bylaws, rules and regulations.
    - Ensure that the medical staff is *accountable for quality of care*.
    - Ensure that the selection criteria are individual character, competence, training, experience and judgment.
    - Ensure that the selection criteria are not based solely on certification, fellowship, or membership in specialty body.
    - Ensure that the appraisal process is conducted periodically.
TJC – Interpretive Services Telemedicine

- Interpretive Services Telemedicine - LD.04.03.09:
  - Can rely on “distant site” credentialing.
  - “Distant site” must be a TJC-accredited hospital or TJC-accredited ambulatory care entity.
  - Written agreement required.
  - Performance expectations established, monitored and acted on.
  - Provision made for continuity of care when agreement ends.
  - If the distant site provider is not a hospital, must confirm that its credentialing is comparable to that used in hospitals (Slide**).
TJC - Non-hospital Telemedicine Credentialing (Slide**)

- Basic credentialing requirements for non-hospitals:
  - The entity must ensure:
    - Clearly defined process and criteria approved by the organized medical staff and governing body outlined in the medical staff bylaws.
    - Verification of identity, licensure, training, current competence from primary source whenever feasible, or CVO – and NDPB query.
    - Evidence of physical ability to perform privileges.
    - Data from professional practice review if available.
    - Peer and faculty recommendation (6 competencies).
    - Evaluation of “adverse” credentialing history.
    - Consistent application of criteria, no discrimination.
    - Final decision by governing body.
    - 2-year renewal period.
TJC – Direct Care Telemedicine

Direct Care Telemedicine – MS.13.01.01

- Three Options:
  - Full credentialing by providing site.
  - Full credentialing by providing site using data from a TJC-accredited distant site.
  - For non-”Medicare deemed-status” hospitals, rely on TJC-accredited distant site credentialing if all requirements met.

- Requirements for distant site credentialing. (Currently non-Medicare only).
  - Written agreement.
  - Privileging at distant site for the specific services provided.
  - Providing site has evidence of distant site’s internal performance review of these privileges.
  - Providing site sends performance information, including “sentinel events” adverse outcomes and all complaints from patients, practitioners or staff.
  - If the distant site provider is not a hospital, must confirm that its credentialing is comparable to that used in hospitals. (Slide**).
When can TJC-accredited hospitals take advantage of new CMS regs?

- **Modification of current TJC standards**
  
  - Per current TJC standards, hospitals that have Medicare deemed-status, may not rely on “distant site” credentialing. TJC will need to remove this obstacle.
  
  - On May 6, TJC issued a press release applauding the new CMS regulations, and stating that it will be “evaluating its telemedicine requirements to reaffirm that they remain aligned with the requirements of CMS.”
  
  - CMS expects TJC to conform its accreditation standards by the effective date of July 5, 2011.
Are Medical Staff Bylaws Amendments Required?

- **Providing Sites – Likely yes:**
  - Per TJC’s MS.01.01.01, medical staff bylaws amendment will likely be required to implement the new “distant site” credentialing processes.
  - Bylaws amendments are developed and approved by the organized medical staff, and then submitted to the governing body for action.
  - The amendment procedures take time, and should be started immediately so that hospitals can be positioned to take advantage of the new processes as soon as possible after the July 5, 2011 effective date.

- **Distant Sites – Likely no.**
When to start implementation?

- Providing sites and distant sites should begin to collaborate immediately to:
  - Define the credentialing and privileging procedures that will need to be put in place at the providing site and distant site (particularly with regard to the non-hospital distant site).
  - Develop and confirm the processes and information flow that will assure both the providing site and distant site that all of the CMS and TJC requirements are being met.
  - Draft written agreements confirming the above.
e-Health Licensure
State Alliance for e-Health

- **Purpose:** To identify, assess, and, through consensus solutions, identify ways to resolve multi and inter-state health IT issues

- **Composition:** Governors and high-level legislative and executive branch state officials

- **Managed by:** National Governors Association Center for Best Practices (HHS contract)
States medical boards should individually participate in a collaborative effort with their respective state board counterparts to establish a process that ensures licensure recognition by other states.
License Portability Summit – February 2009

- Built on existing efforts
  - Licensure Portability Grants – Health Resources and Services Administration (HRSA)/ the Federation of State Medical Boards (FSMB)
  - On-Line Uniform Application – FSMB
  - Federation Credential Verification Service – FSMB
- Representatives from 22 State Medical Boards
  - Administrators and Board Chairs
License Portability Summit – Goals

- A Common Online Application – to include a core set of data with State-specific addendums.
  - Increase adoption of the FSMB Uniform Application;
- Credential Verification Organization (CVO) – the medical boards should contract with a single CVO.
  - Improve the FSMB’ Federation Credentials Verification Service and ensure that it meets certain standards (e.g., National Committee for Quality Assurance certification)
Medical Board Attorney Meeting – August 31, 2010

Goal:

- Develop consensus around a standard set of licensure application attestation questions, while maintaining the integrity of the licensure process
  - Move attestation questions from state specific addendums to core data set
Medical Board Attorney Meeting

Medical Board Participants:
- Bruce McIntyre, JD (RI) - Chair
- Kent Nebel, JD (IA)
- Lloyd Vest, JD (KY)
- Sallie Debolt, JD (OH)
- Chad Zadrazil, JD (WI)
- Deborah Lewis Rodecker, JD (WV)
- Sean Chambers, JD (WY)

Other Participants:
- Stephanie Jamison (NGA)
- Betsy Ranslow (ONC)
- Melissa Hargiss, JD (ONC)
- Lisa Robinson (FSMB)
- Nancy Kerr (FSMB)
Medical Board Attorney Meeting

Unanticipated Incentive:

■ Desire to have final product reviewed and approved by:
  □ The HHS Office of Civil Rights (OCR/ for physical and mental health questions)
  □ The HHS Office of Inspector General (OIG) for Medicare and Medicaid questions
  □ The Drug Enforcement Agency, Department of Justice (DEA) for DEA questions
Outcome – Attestation Questions

- Consensus Reached
- Reviewed and approved by OCR, OIG and DEA/Justice
- Developed a second report to the State Medical Boards
  - Update on the Uniform Application
  - Update on FSMB’s Federation Credentials Verification Service (CVO)
  - Medical Board Attorney Meeting Summary
Contact Information

- State Alliance for e-Health:
  - http://www.nga.org/center/ehealth

- Office of the National Coordinator for HIT:
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