

Office of Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 12-36-HOSPITAL

DATE: June 15, 2012

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Revised Hospital Conditions of Participation (CoPs) – Governing Body

Memorandum Summary

Revised Hospital Regulations Effective July 16, 2012: The Centers for Medicare & Medicaid Services (CMS) has adopted a number of changes to the hospital CoPs and is in the process of developing interpretive guidelines to assist surveyors in assessing compliance under the revised regulations. Due to the number and complexity of the revisions, this guidance may not be published for all of the affected requirements by July 16th, the effective date of the final regulations.

Hospital Governing Body and Medical Staff: In the case of the new requirement for a hospital's governing body to include a member of the medical staff under §482.12, CMS is presently reconsidering this policy in light of the numerous comments that have been received since publication of the final rule. Therefore,

- Surveyors should not attempt to assess compliance with this new requirement or cite deficiencies related to this specific requirement without receiving instructions from CMS.
- Accrediting organizations with CMS-approved hospital accreditation programs are not expected to revise their standards or survey processes related to this particular requirement until we have addressed the issue completely.

Background

As we discussed in S&C Memorandum 12-29-ALL on May 11, 2012, two final rules, *Medicare and Medicaid Programs; Reform of Hospital and Critical Access Hospital Conditions of Participation* CMS-3244-F (77 FR 29034 – 29076, May 16, 2012) and *Medicare and Medicaid Program; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction*, CMS-9070-F (77 FR 29002 – 29031, May 16, 2012), will become effective July 16, 2012. The rules amend nine hospital CoPs, five CAH CoPs and one ASC CfC. Consistent with Executive Order 13563, *Improving Regulations and Regulatory Review*, these revised final rules

were adopted to reform prior CoPs or CfCs that were identified as unnecessary, obsolete, or excessively burdensome to health care providers and beneficiaries. CMS is working diligently to develop interpretive guidelines to assist State Survey Agencies (SAs) in assessing compliance in accordance with the revised CoPs or CfCs. However, due to the number and complexity of the revisions, it may not be possible to release updated guidance for all the changes made by the final rule by July 16th. Detailed interpretive guidelines are under development and will be released for each provider and supplier type affected.

Requirement to include medical staff member(s) on the governing body

The revised regulation at 42 CFR 482.12 requires inclusion of one or more members of the medical staff on a hospital's governing body. Subsequent to adoption of this regulation, numerous questions and concerns have been raised by various stakeholders, including the questions about interaction of this requirement with other Federal, State or local laws. Given the complexity of the issues that have been raised, we are carefully reviewing the comments and will reconsider this requirement in future rulemaking. Therefore, surveyors should not interpret on their own the requirement concerning medical staff membership on the governing body, and must not issue citations related to this specific provision.

In addition, we are instructing the three accreditation organizations with a CMS-approved Medicare hospital accreditation program, the American Osteopathic Association (AOA), Det Norske Veritas (DNV) Healthcare, and The Joint Commission, not to revise their accreditation standards related to this aspect of the composition of the governing body until we have addressed the issue completely.

Questions concerning this memorandum may be sent to hospitalscg@cms.hhs.gov.

Effective Date: July 16, 2012. This policy should be communicated to all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management