

CLIENT ALERT

December 14, 2006

CMS ISSUES FINAL RULE EXPANDING MEDICARE CONDITIONS OF PARTICIPATION FOR HOSPITALS

On November 27, 2006, the Centers for Medicare & Medicaid Services (“CMS”) issued a final rule, modifying four conditions of participation for hospitals relating to completion of the history and physical examination, authentication of oral orders, securing medications, and completion of postanesthesia examinations. According to CMS, the changes, which take effect on January 26, 2007, were made in order to be “consistent with current standards of practice, to provide hospitals and practitioners greater flexibility in meeting the needs of patients, and to reduce unnecessary regulatory burden for hospitals.”

Each of the revised requirements is discussed briefly below:

HISTORY AND PHYSICAL EXAMINATION

The final rule revises the timeframe for a history and physical (“H&P”) examination. Currently, the H&P must be completed no more than seven days before or 48 hours after an admission. Under the new rule, the H&P must be completed no more than 30 days before or 24 hours after an admission. When an H&P is completed within 30 days before admission, the final rule requires that the hospital ensure that an updated medical record entry documenting an examination for any changes in the patient’s condition is completed and documented in the patient’s medical record within 24 hours after admission.

According to CMS, the expanded timeframe for completion of an H&P examination before admission supports safe patient care as long as the hospital ensures documentation of the patient’s current condition in the medical record within 24 hours after admission.



The revised timeframe also corresponds with JCAHO's revised standard that states a history and physical examination performed within 30 days before admission may be used in the patient's medical record, provided any changes in the patient's condition are documented in the medical record at the time of admission.

CMS also expanded the number of permissible categories of individuals who may perform an H&P by deleting the requirement that a practitioner must be granted the privilege to conduct an H&P by the medical staff. Instead, the final rule allows for an H&P to be performed by a "qualified individual in accordance with state law and hospital policy." Please note that the Connecticut Public Health Code (§19-13-D3(d)(2)) requires that a complete H&P be recorded in the medical record by the attending physician or resident within 24 hours of admission.

AUTHENTICATION OF ORAL ORDERS

The final rule retains the current requirement that all orders, including oral orders, must be dated, timed, and authenticated by the prescribing practitioner with a temporary exception. For a period of five years, beginning on January 26, 2007, the final rule requires that all orders, including oral orders, must be dated, timed, and authenticated promptly by either the prescribing practitioner or another practitioner responsible for the care of the patient, even if the order did not originate with him or her. According to CMS, the temporary exception to the authentication requirement is intended to reduce burden and provide flexibility for hospitals until health information technology is sufficiently advanced to allow the prescribing practitioner to authenticate his or her own orders promptly and efficiently.

The final rule also requires that all oral orders be authenticated based upon federal and state law. Due to the fact that no Connecticut law specifies a timeframe for authentication, the final rule requires that oral orders must be authenticated within 48 hours.

SECURING MEDICATIONS

In accordance with the current rule, hospitals must keep drugs and biologicals in a locked storage area, regardless of whether they are scheduled. The final rule provides more flexibility for hospitals in determining control of nonscheduled drugs and biologicals by requiring that all drugs and biologicals be kept in secure areas, and locked when

appropriate, and that only drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 must be kept locked within a secure area.

COMPLETION OF POSTANESTHESIA EXAMINATIONS

The final rule permits postanesthesia evaluations for inpatients to be completed and documented by an individual qualified to administer anesthesia, instead of only the individual who administered the anesthesia.

The final rule may be viewed at:

<http://www.shipmangoodwin.com/files/upload/cmsrules.pdf>.

QUESTIONS OR ASSISTANCE?

If you have any questions regarding the significance of any of these issues or how to modify your corporate compliance audit and monitoring activities, please do not hesitate to contact Joan Feldman at (860) 251-5104, Alex Lloyd at (860) 251-5102, John Lawrence at (860) 251-5139, Maureen Anderson at (860) 251-5589, or Jeri Barney at (860) 251-5108.