Telemedicine on the Rise:
Maintain Your Compliance with Regulatory Standards

Wednesday, May 14th, 2014
Speaker

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- Board Member
  Emergency Medicine Patient Safety Foundation
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Learning Objectives

1. Discuss the CMS-issued regulations and interpretive guidelines that are a part of the hospital CoPs on telemedicine credentialing.

2. Recall why CMS includes a mechanism for all hospitals to use proxy credentialing with Medicare-certified hospitals and other telemedicine entities.

3. Explain when a hospital must have a written agreement specifying the responsibilities of a distant-site hospital in order to meet credentialing requirements.

4. Explain new and revised standards, regulations, and laws put forth by CMS, TJC and the federal government.

5. Evaluate compliance requirements and penalties.
Telemedicine in 2014

- There is a lot of activity regarding telemedicine currently
- Recognized as a strategic tool to grow revenue, drive efficiency, and improve patient safety and outcomes
- Hospitals using telemedicine report higher profits according to a recent study
  - Study of 16 hospitals and revenues went from 2.4 million to $4 million
- Hospitals need to make sure they understand the regulatory requirements such as the federal law and the CMS hospital conditions of participation (CoPs)
What Can Telemedicine Do For Your Hospital?

What can telemedicine do for your hospital?
Increases in profit, patients and ease of access are all possible with telemedicine.

By Michael Sherman | Posted: August 14, 2013

www.healthcarecommunication.com/Mobile/Articles/What_can_telemedicine_do_for_your_hospital_11384.aspx
Many Tele-Medicine Organizations

http://telemedicine.com/grants.html

Telemedicine Grants and Funding News

A Look at How the 2014 Budget Battle Impacts Grants

The truth is that the federal government has not passed an actual budget bill, nevermind an on-time one, since April 2009... they wreak havoc on the ability of federal agencies to effectively plan their grant programming and financial obligations for the year.

grant-writer services available - contact us today!

New Funding Opportunities

Rural Health Network Development (RNND) Grant Program
Health Resources & Services Administration — Department of Health and Human Services (HRSA-14-044)
Eligible: 93.912 -- Rural Health Care Services Outreach, Rural Health Network Development and Small Health Care Provider Quality Improvement
Award Ceiling: $300,000; 15 Awards Expected
Due: November 22, 2013

Upgrading & Funding Technology
Federal Telemedicine News U.S Senators Jay Rockefeller, Joe Manchin and Government
Interventions for Health Promotion and Disease Prevention in Native
Learn Anywhere with the New, Online ATA Learning Center

The online ATA Learning Center has thousands of educational resources for telemedicine professionals, accessible 24/7. Read More »
ATA Standards & Guidelines

ATA Standards & Guidelines

ATA's practice guidelines for telemedicine are the critical foundation for the deployment of telemedicine services. Standards form the basis for uniform, quality patient care and safety, grounded in empirical research and clinical experience. The establishment of such standards also accelerates the adoption of telemedicine by payers, administrators and providers who are full partners with ATA in their development along with industry, government agencies, medical societies and other stakeholders.

Completed ATA Standards and Guidelines

The following Standards and Guidelines have been released by ATA. All documents are available to download, at no cost.

A Lexicon of Assessment and Outcome Measures for Telemental Health
Published Nov. 2013
This lexicon is a research tool developed to aid telemental health professionals in the selection of assessment and outcome measures. This resource will help grow understanding in the field, allow for broader comparisons, and support better generalization of findings.

Details | Download

Practice Guidelines for Video-Based Online Mental Health Services
Published May 2013
Covering the provision of mental health services when using real-time videoconferencing services transmitted via the Internet, including a personal computer with a webcam or a mobile communications device (e.g., “smart phone”, laptop, or tablet) with two-way camera
Standards & Guidelines

- CMS CoP states that hospitals should follow national standards of care and practice
- CMS can cite hospital for being out of compliance
- Examples include standards and guidelines for:
  - Mental health services
  - Videoconferencing based telepresenting
  - Recommendations for diabetic retinopathy, telerehabilitation guidelines, teledermatology, home telehealth clinical guidelines, and telepathology
  - Working on TeleICU, wounds and burns, remote prescribing, urgent care, telepathology, etc.
Clinical Guidelines & Position Statements

- **ACR–AAPM–SIIM Practice Guideline for Digital Radiography**
  *American College of Radiology | Published September 20, 2012*
  This guideline is applicable to the practice of digital radiography. It defines motivations, qualifications of personnel, equipment guidelines, data manipulation and management, and quality control (QC) and quality improvement procedures for the use of digital radiography that should result in high-quality radiological patient care.

- **ACR–AAPM–SIIM Technical Standard for Electronic Practice of Medical Imaging**
  *American College of Radiology | Published September 20, 2012*
  For the purpose of this technical standard, the images referred to are those that diagnostic radiologists would normally interpret, including transmission projection and cross-sectional X-ray images, ionizing radiation emission images, and images from ultrasound and magnetic resonance modalities.

- **ACR–AAPM–SIIM Practice Guideline for Determinants of Image Quality in Digital Mammography**
  *American College of Radiology | Published September 20, 2012*
  For purposes of this guideline, digital mammography is defined as the radiographic examination of the breast utilizing dedicated electronic detectors to record the image (rather than screen-film) and having the capability for image display on computer monitors.

- **FSMB Model Policy Guidelines for the Appropriate Use of Social Media and Social Networking In Medical Practice**
  *Federation of State Medical Boards | Published 2012*
  Ethical and professional guidance to the FSMB membership with regard to the use of electronic and digital media by physicians (and physician assistants, where appropriate) that may be used to facilitate patient care and nonprofessional interactions. Such electronic and digital media include, but are not limited to, e-mail, texting, blogs, and social networks.

- **Guidelines For Electronic Medical Information Privacy and Security**
  *American College of Radiology | Published 2012*
  These practice guidelines are designed to address privacy and security of electronic medical information for telemedicine and telehealth services. In May 2010, the ATA board of directors approved adoption of the ACR Practice Guideline for Electronic Medical Information Privacy and Security.

- **AAD Position Statement on Teledermatology**
  *American Academy of Dermatology Association | Published 2004*
  Practitioners who wish to integrate teledermatology into their practice will likely choose between two fundamentally different care delivery platforms (Store and Forward vs. Live Interactive). Both platforms have strengths and weaknesses. What follows is a definition of each platform and the respective AADA...
Summary of Law and IG from CMS

- Telemedicine rules allow hospitals and critical access hospitals (CAH) to provide telemedicine services to their patients through written agreements with a
  - Distant-site hospital (DSH) or a
  - Distant-site telemedicine entity (DSTE)

- Streamlines credentialing and privileging (C&P) for physicians and practitioners to allow hospitals to rely on the privileging decisions of a DSH or DSTE with which they have a written agreement that meets the Medicare requirements
TJC Telemedicine Standards

- Joint Commission (TJC) has telemedicine standards in two separate chapters
  - LD.04.03.09 under contract management
  - MS.13.01.01 LIPs who are responsible for the care and treatment of patients via telemedicine link are subject to the credentialing and privileging process of the originating site
- TJC made changes **three** times to ensure they are aligned with the CMS hospital CoP requirements
TJC Telemedicine Standards

- Actually, TJC has always had a credentialing by proxy standards
  - Allow credentialing by proxy by allowing use of information from distant site or other accredited facility to be used
- CMS was more stringent with the full C&P requirements
  - Hard for critical access hospitals and small rural hospitals to do full C&P
- Many hospitals wrote CMS and their congress representative asking for the change
TJC Telemedicine Standards

- TJC issues news release on May 6, 2011 called “The Joint Commission Applauds CMS’ Revised Telemedicine Requirements”

- TJC Issues article in June 2011 Perspective called “Joint Commission to Review Its Telemedicine Requirements”
  - Applauds CMS for taking a giant step to remove unnecessary barriers
  - Upholds TJC current practice to allow hospital to use information from distant-site hospital or accredited tele-medicine entity to make C&P decisions
The Joint Commission Applauds CMS’ Revised Telemedicine Requirements

May 6, 2011

By: Elizabeth Eaken Zani, Media Relations Manager

(OAKBROOK TERRACE, Ill. – May 6, 2011) The Joint Commission applauds the publication of the Centers for Medicare & Medicaid Services (CMS) new Telemedicine Credentialing and Privileging requirements. With this new rule, which becomes effective on July 5, 2011, CMS has taken a giant step in removing unnecessary barriers to the use of telemedicine for medically necessary interventions. These updates respond to The Joint Commission’s stance on the need to limit overly burdensome requirements that may impede patient access to health care services.

The rule, which applies to all hospitals that participate in Medicare, and inpatients at critical access hospitals (CAH), upholds The Joint Commission’s current practice of allowing the hospital or CAH to utilize information from the distant site hospital or other accredited telemedicine entity when making credentialing or privileging decisions for the distant-site physicians and practitioners.

The Joint Commission is pleased that CMS has raised its telemedicine requirements to provide greater flexibility...
Joint Commission to Review Its Telemedicine Requirements

Implementation Delayed to Ensure Standards Align with CMS

The Joint Commission is evaluating its telemedicine credentialing and privileging requirements for hospitals and critical access hospitals to reaffirm that they remain aligned with the requirements of the Centers for Medicare & Medicaid Services (CMS).

In early May, CMS published its new telemedicine credentialing and privileging requirements, which become effective July 5, 2011. With these new requirements, CMS has taken a giant step in removing unnecessary barriers to the use of telemedicine for medically necessary interventions. These updates respond to The Joint Commission’s stance on the need to limit overly burdensome requirements that may impede patient access to health care services. The requirements, which apply to all hospitals that participate in Medicare and critical access hospitals, upholds The Joint Commission’s current practice of allowing a hospital or critical access hospital to use information from the distant-site hospital or other accredited telemedicine entity when making credentialing or privileging decisions for the distant-site telemedicine practitioner.

The Joint Commission will review and make changes to its standards in accordance with the regulation and will notify its accredited hospitals and critical access hospitals of the timeframe expected for implementation in alignment with the new CMS regulations. Perspectives will provide updates on this issue of telemedicine as further information becomes available.

Flexibility and Ease of Burden

For the past three years, The Joint Commission has engaged CMS and members of Congress regarding CMS’s approach to credentialing and privileging of telemedicine providers. The Joint Commission took the position that there would be an adverse affect on access to telemedicine services if Joint Commission-accredited hospitals were not allowed to use, for telemedicine practitioners, the credentialing and privileging decisions made by other Joint Commission-accredited facilities, especially since these facilities are held to the same rigorous requirements. The Joint Commission believes that the previous CMS requirements placed an undue burden on many organizations because they did not improve the quality of services, the accountability of physicians and practitioners, or the effectiveness of the credentialing and privileging processes.

“The Joint Commission is very pleased that CMS has revised its telemedicine requirements to provide more flexibility to hospitals and lessen their regulatory burden. This is an especially positive step for improving access to care for patients in rural areas,” says Mark R. Chassin, M.D., FACE, M.P.H., president, The Joint Commission. “Of particular importance is the fact that critical access hospitals will have additional avenues to benefit from the services of particularly skilled physicians and practitioners.”
The board of the distant site is responsible for having a process for C&P that meets the requirements of the MS chapter:
- See MS.06.01.01-.13 and MS.10.01.01 revised 7-1-12

The distant site furnishes services in a manner that permits the originating site to be in compliance with CMS CoPs:
- Board of originating site relies on information from the distant site
- Based on the MS recommendation
January 2012 Perspective

**ACCEPTED: Final Revisions to Telemedicine Standards**

The Centers for Medicare & Medicaid Services (CMS) recently approved The Joint Commission’s final revisions to requirements related to the credentialing and privileging of telemedicine practitioners in hospitals and critical access hospitals.

The Joint Commission’s initial revisions, approved by CMS in response to its May 5, 2011, Medicare Conditions of Participation (CoP) final rule, were published in the October 2011 issue of Perspectives on pages 6–9. The revisions appear in the elements of performance (EPs) of the Leadership (LD) and Medical Staff (MS) standards related to the Medicare CoP requirements. In all, the new Medicare CoP requirements remove barriers to the use of telemedicine for medically necessary interventions and uphold The Joint Commission’s existing practice of allowing an originating site (where the patient is located) to use the credentialing and privileging information from a distant site when making final privileging decisions for telemedicine practitioners.

The Joint Commission’s Board of Commissioners has accepted the final changes, which are effective immediately. The revisions are shown in the accompanying box below, with new text underlined and deletions noted in strikethrough. These revisions will appear in the 2012 Update 1 to the Comprehensive Accreditation Manual for Hospitals and the Comprehensive Accreditation Manual for Critical Access Hospitals, which are scheduled for publication in late March, and in the E-dition®, which is scheduled for release in April.

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**Official Publication of Joint Commission Requirements**

**Final Telemedicine Revisions**

If the originating site chooses to use the credentialing and privileging decision of the distant site telemedicine provider, then the following requirements apply:

- The governing body of the distant site is responsible for having a process that is consistent with the credentialing and privileging requirements in the “Medical Staff” (MS) chapter. (For more information, see Standards MS.06.01.01 through MS.06.01.13.)
- The governing body of the originating site grants privileges to a distant site licensed independent practitioner based on the originating site’s medical staff recommendations, which rely on information provided by the distant site.
EP 23 When telemedicine services are provided to hospital patients

- The originating site has a written agreement with the distant site that includes the following:
- The distant site is a contractor of services to the hospital
- The distant site furnishes services in a manner that permits the originating site to be in compliance with the CMS hospital CoPs
The originating site makes certain through the written agreement (contract) that all distant-site telemedicine providers’ credentialing and privileging (C&P) processes meet, at a minimum, the CMS hospital COPs.

Board of the distant site is responsible to C&P with a process that is consistent with the TJC MS chapter which is MS.06.01.01 to MS.06.01.13.

Board of the originating hospital grants privileges to distant site LIPs based on the originating site’s MS recommendations, why rely on information provided by the distant site.
- CFR 482.12(a)(1) through (a)(9) and 482.22(a)(1) through (a)(4).

- See also MS.13.01.01, EP 1

- The governing body of the distant site is responsible for having a process that is consistent with the credentialing and privileging requirements in the “MS chapter (MS.06.01.01-.13)

- The board of the originating site grants privileges to a distant-site licensed independent practitioner based on the originating site’s medical staff recommendations, which rely on information provided by the distant site
CMS Telemedicine

- The CMS Telemedicine Credentialing and Privileging (C&P) requirements provide some unique opportunities and challenges for hospitals.

- Previously, concerns from hospitals that CMS previous requirements for full C&P
  - Placed an undue burden on hospitals and costly
  - Added no improvement in the quality of care to patient
  - Added no increased accountability of physicians or LIPs
CMS Telemedicine Guidelines

- Removes credentialing barrier to telemedicine
- The new rules are easier for critical access and small hospitals who in the past had to do full C&P
  - When they lacked in-house medical staff with the clinical expertise to adequately evaluate and
  - Privilege the wide range of specialty physicians that were needed
- Note the standard is telemedicine and not just tele-radiology
CMS Telemedicine

- It would affect the oncologist of a tertiary hospital who interacts with a patient via teleconference at a small critical access hospital.

- Dr. Don Berwick, CMS Administrator at the time, said he wants to:
  - Devise policies that reflect the most innovative practices in delivering care to all patients,
  - Especially patients in rural or remote parts of the country through telemedicine and
  - To ensure they receive cutting edge medical care.
MEDICARE FINALIZES A NEW RULE FOR TELEMEDICINE SERVICES TO KEEP BENEFICIARIES IN RURAL AND REMOTE AREAS DIALED IN THROUGH TELEMEDICINE

The Centers for Medicare & Medicaid Services (CMS) today announced that it has finalized a rule for telemedicine services to ensure that patients in rural or remote areas will continue to receive the most cutting-edge medical care from many of their local hospitals.

The final rule changes the process that hospitals and critical access hospitals (CAH) can use for credentialing and granting privileges to physicians and practitioners who deliver care through telemedicine. Specifically, the rule simplifies how hospitals and CAHs partner with hospitals and non-hospital telemedicine entities (such as teleradiology facilities) to deliver care to their patients. The streamlined process will be particularly beneficial to patients of small hospitals and CAHs in rural or remote areas that may lack staff or resources to deliver specialized clinical expertise to their patient populations.
The federal regulations were published in the May 5, 2011 Federal Register

- 16 pages long and effective on July 5, 2011
- Discussed comments to the proposed rules

These were placed in the hospitals Conditions of Participations (CoPs)

- CMS published the interpretive guidelines to the regulations became effective July 15, 2011
- Section for hospitals and critical access hospitals
Final Telemedicine Regulations

apply to the navigable waters in the San Pablo Bay, and will encompass an area beginning at position 38°01'44" N, 122°27'06" W; 38°04'36" N, 122°20'06" W; 38°00'35" N, 122°26'07" W; 38°03'00" N, 122°20'20" W (NAD 83) and back to the starting point.

(b) Enforcement. The Coast Guard will notify the public via a Broadcast Notice to Mariners prior to the activation of this safety zone. The safety zone will be activated on average two times per month, but could be activated up to six times per month. It will be in effect for approximately three hours from 9 a.m. to 11:59 p.m. If the exercises conclude prior to the scheduled termination time, the Coast Guard will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners. Persons and vessels may also contact the Coast Guard to determine the status of the safety zone on VHF-16 or the 24-hour Command Center via telephone at (415) 399-3547.

(c) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard Coxswain, petty officer, or other officer operating a Coast Guard vessel; and a

Centers for Medicare & Medicaid Services

42 CFR Part 482 and 485

[CMS-3227-F]

RIN 0938-AQ05

Medicare and Medicaid Programs:
Changes Affecting Hospital and Critical Access Hospital Conditions of Participation: Telemedicine Credentialing and Privileging

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will revise the conditions of participation (CoPs) for both hospitals and critical access hospitals (CAHs). The final rule will implement a new credentialing and privileging process for physicians and practitioners providing telemedicine services. Currently, a hospital or CAH receiving telemedicine services must go through a burdensome credentialing and privileging process for each physician and practitioner who will be providing telemedicine services to its patients. This rule revises these requirements to make it easier and more efficient for hospitals and CAHs to provide telemedicine services.

www.access.gpo.gov/su_docs/fedreg/a110505c.html
CMS Interpretive Guidelines on Telemedicine

- Were published in the Policy and Memos to States and Regions website on July 15, 2011
  - www.cms.gov/SurveyCertificationGenInfo/PMSR/list.asp#TopOfPage
- 27 pages long
- Hospitals can still choose to do full C&P of practitioners with telemedicine privileges
- Hospitals can still choose to use a third party credentials verification organization or CVO
  - Board is still legally responsible for privileging decisions
DATE: July 15, 2011
TO: State Survey Agency Directors
FROM: Director, Survey and Certification Group
SUBJECT: Telemedicine Services in Hospitals and Critical Access Hospitals (CAHs)

Memorandum Summary

- **Telemedicine Rules Adopted for Hospitals/CAHs:** New and amended rules effective July 5, 2011 permit hospitals and CAHs to provide telemedicine services to their patients through written agreements with a distant-site hospital or a distant-site telemedicine entity.

- **Streamlined Credentialing & Privileging for Telemedicine Physicians & Practitioners:** Hospitals and CAHs may rely, when granting telemedicine privileges, upon the privileging decisions of a distant-site hospital or telemedicine entity with which they have a written agreement that meets Medicare requirements.

On May 5, 2011, the Centers for Medicare & Medicaid Services (CMS) published a final rule (76 FR 25550), effective July 5, 2011, governing the agreements under which a hospital or CAH may provide telemedicine services to its patients. “Telemedicine,” as the term is used in this rule, means the provision of clinical services to patients by physicians and practitioners from a distance via electronic communications. The distant-site telemedicine physician or practitioner provides clinical services to the hospital or CAH patient either simultaneously, for example, as in teleICU services, or non-simultaneously, as is the case with many teleradiology services.
CMS Transmittal and Updated CoP Manual

- CMS issues the survey memo and then a transmittal on telemedicine which had the final changes
  - The CMS transmittal was published on December 22, 2011
  - A transmittal is published with the final wording so it can be included in the CMS hospital CoP manual

- CMS issues an updated Hospital CoP manual on December 22, 2011 which is in the current manual
  - Amends tag numbers 45, 52, 339, 342, 343 and 363 on telemedicine under Appendix A
  - The manual now has 457 pages and tag numbers go from 0001 to 1164
Transmittals

www.cms.gov/Transmittals/01_overview.asp
State Operations Manual
Appendix A - Survey Protocol,
Regulations and Interpretive Guidelines for Hospitals

A-0045

(Rev. 78, Issued: 12-22-11, Effective/Implementation: 12-22-11)

[The governing body must:]
§482.12(a)(1) Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff;

Interpretive Guidelines §482.12(a)(1)

The governing body must determine, in accordance with State law, which categories of practitioners are eligible for appointment to the medical staff.

The medical staff must, at a minimum, be composed of physicians who are doctors of medicine or doctors of osteopathy. In addition, the medical staff may include other types of health care professionals included in the definition of a physician in Section 1861(r) of the Social Security Act:

- Doctor of medicine or osteopathy;
- Doctor of dental surgery or of dental medicine;
- Doctor of podiatric medicine;
- Doctor of optometry, and
- a Chiropractor.
CMS CoP Board Section

- Amends the CoP under the governing body or board section and the medical staff section
  
  - Board section starts at Tag A-0043 for PPS Hospitals of Appendix A
    - Paid through the Prospective Payment System and these are the larger hospitals
  
  - Board section starts at Tag C-0241 of Appendix W
    - Critical access hospitals or those smaller than 25 beds or less
  
- CAH with up to 10 bed rehab or behavioral unit follow Appendix A standards and not Appendix W
### CMS CoP Tag Numbers

- **Hospital CoP amends tag numbers under Appendix A**
  - Board section on MS Tag numbers **45** and **52**
  - MS Tag numbers **339, 342, 343, 363**

- **CMS CAH amends or adds tag numbers under Appendix W**
  - Tag numbers **196** and **197** on agreements for C&P of telemedicine physicians
  - Tag number **285** on services provided through agreements
  - Tag number **340** on Quality Assurance

- Hospitals regulation is 42 CFR 482.12(a) and CAH is 42 CFR 482.22(a)
Currently, the CMS telemedicine transmittal of December 22, 2011 are incorporated into both the current PPS and CAH manuals

The most manual for PPS hospital is Feb 14, 2014 and CAH January 31, 2014

- All hospitals should have a current copy of their hospital CoP manual
- Consider placing on hospital intranet

No changes effective the telemedicine standards in the more than 2 dozen changes effective June 7, 2013 or in the 2014 changes
Location of CMS Hospital CoP Manuals

CMS Hospital CoP Manuals new address

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State Operations Manual
Appendix A - Survey Protocol,
Regulations and Interpretive Guidelines for Hospitals

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(Rev. 103, 02-14-14)

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Psychiatric Hospital Survey Module
Psychiatric Unit Survey Module
Rehabilitation Hospital Survey Module
Inpatient Rehabilitation Unit Survey Module
Hospital Swing Bed Survey Module

State Operations Manual
Appendix W - Survey Protocol, Regulations and Interpretive Guidelines for Critical Access Hospitals (CAHs) and Swing-Beds in CAHs

(Rev. 90, 08-30-13)
(Rev. 99, 01-31-14)

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CMS Survey and Certification Website

www.cms.gov/SurveyCertificationGenInfo/PMSR/list.asp#TopOfPage
# Policy & Memos to States and Regions

CMS Survey and Certification memoranda, guidance, clarifications and instructions to State Survey Agencies and CMS Regional Offices.

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Telemedicine and EMTALA

- CMS issues survey memo June 7, 2013
- Discusses CAH, telemedicine and EMTALA
- Some CAH do not have a physician in the ED
- May be staffed with NP or PA with emergency care training
- Must have physician (MD/DO) who is available by phone or radio contact
- This requirement can be met by the use of telemedicine as well as by the MD/DO who practices on site in the CAH
Telemedicine and EMTALA

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7300 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850

Center for Clinical Standards and Quality/Survey & Certification Group

DATE: June 7, 2013
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group

SUBJECT: Critical Access Hospital (CAH) Emergency Services and Telemedicine: Implications for Emergency Services Condition of Participation (CoPs) and Emergency Medical Treatment and Labor Act (EMTALA) On-Call Compliance

Memorandum Summary

- **The Center for Medicare & Medicaid Services (CMS) Welcomes use of Telemedicine by CAHs:** Telemedicine has great potential to expand availability of specialty care services, including emergency medicine services, to rural populations. However, misconceptions about CAH CoP and EMTALA requirements may cause unnecessary concerns about, or create barriers to, using telemedicine.

- **The CAH Emergency Services CoP does not Require a Physician to Appear On-site Whenever an Individual Comes to the Emergency Department (ED):**
  - Under 42 CFR 485.618(d), a doctor of medicine (MD), a doctor of osteopathy (DO), a physician assistant (PA), a nurse practitioner (NP), or a clinical nurse specialist (CNS), with training or experience in emergency care, must be immediately available by telephone or radio, and available on-site within 30 minutes (60 minutes for CAHs in frontier areas that meet certain conditions). Under the CAH CoPs an MD or DO is not required to be available in addition to a non-physician practitioner.
  - Under the CoP at §485.618(c), an MD or DO must be immediately available by telephone or radio contact on a 24-hours a day basis to receive emergency calls, provide information on treatment of emergency patients, and refer patients. This requirement can be met by the use of a telemedicine MD/DO as well as by an MD/DO who practices on-site at the CAH.

- **EMTALA is Not a Barrier to Using Telemedicine to Extend CAH Emergency Services:**
  - If using telemedicine for emergency and other services, a CAH is not required to include the telemedicine physicians on its physician on-call list mandated under the EMTALA regulations at 42 CFR 489.20(r)(2) and §489.24(j), nor would it be advisable for CAHs to do so.
Telemedicine and EMTALA

- Some CAH are so small they may not have any patients in the ED but will have a RN to initially assess patients.

- Hospital must have a physician, PA, NP, or CNS on call though who can respond if necessary and be on site within 30 minutes.

- This requirement cannot be met by telemedicine.

- A CAH MD/DO is not required to be available in addition to the non-physician practitioner (PA, NP) but must be practicing within their scope of practice and as allowed by state law.
CMS Telemedicine Credentialing

- The proposed regulations would have only allowed a hospital to contract with another Medicare participating hospitals for telemedicine services
  - But this was changed in the final regulations

- The final regulations have two pathways or processes that a hospital can use for credentialing and to grant physicians privileges
  - Hospitals that want to use proxy credentialing with Medicare certified hospital (called a distant-site hospital)
  - Hospitals that want to use proxy credentialing with an other telemedicine entity (distant-site telemedicine entity)
Any hospital that wants to contract with another hospital or entity must have a written agreement or contract

- A contract or written agreement must be in place whether the hospital has contracted with a Medicare certified hospital (DSE) or an other telemedicine entity (DSTE or distant site telemedicine entity)

- The board or governing body of the distant site is responsible to make sure there is a written agreement that meets all the requirements

- CMS specifies what must be in the contract or written agreement
Definition of Telemedicine

- CMS defines telemedicine to be the
  - Provision of clinical services to patients
  - By practitioners from a distance
  - Via electronic communications

- Can be provided *simultaneously* as with tele-ICU services

- Can be *non-simultaneously* as with teleradiology or an after the fact interpretation of a diagnostic test
The contract or written agreement of the distant-site must state that the distant site telemedicine entity (DSTE) is a contractor of services to the hospital.

- Must say that the contracted services are provided in a manner that permits the CAH or small and rural hospital to meet all the required conditions of participation.

- CMS struggled with allowing contracts with someone other than a Medicare-certified hospitals.

- Ended up just requiring an entity that is not a hospital to just agree contractually that they will follow all of the CMS required regulations as if they were a hospital.
Have a Contract With the Required Terms

PHYSICIAN CREDENTIALING AND PRIVILEGING AGREEMENT
BETWEEN HOSPITALS

THIS PHYSICIAN CREDENTIALING AND PRIVILEGING AGREEMENT (Agreement) is entered into as of the _______ day of ______________, 2011 (Effective Date), by and between ABCD Originating Site Hospital (OS), and WXYZ Distant Site Hospital (DS) (collectively the Parties).

The parties hereby agree as follows:

1. **OS Relationship.** OS is an acute care hospital which participates in the Medicare program and desires to engage DS which also participates in the Medicare program, to provide certain clinical services from distance via electronic communications to patients physically located at OS (Contracted Services). For purposes of this Agreement, each physician affiliated with DS providing or anticipated to provide Contracted Services is a Physician (collectively Physicians). OS and DS shall agree on a process by which DS may obtain, or have access to, all the necessary patient records from OS.

2. **Compliance with Conditions of Participation.** The OS governing body shall ensure that the DS, acting as an independent contractor, is a Medicare-participating hospital and furnishes its services in a manner that enables the OS to comply with all applicable Medicare conditions of participation for Contracted Services. These areas of compliance shall include, but not be limited to, the requirements for the DS medical staff, governing body, and credentialing and privileging regarding DS physicians providing telemedicine services (42 CFR 482.12(a)(1) through (a)(7); 482.12(a)(1)-(2); 42 CFR 485.616(c)).

3. **Practice Credentialing and Privileging.** DS warrants that each Physician (i) will be credentialed and privileged according to the credentialing and privileging processes and standards, which meet or exceed the OS Standards; and (ii) shall render Contracted Services within the scope of the Physician’s respective privileges.

4. **State or Territorial Licensure.** At all times while providing Contracted Services to OS, each Physician will hold a license issued or recognized by the state in which OS is located.

5. **Decision of Governing Body.** OS’s governing body has chosen to rely on DS’s credentialing and privileging decisions for purposes of OS’s medical staff determining whether or not to recommend that privileges be granted to a Physician.

6. **DS to Provide Current List of Privileges.** DS has supplied OS with Schedule 1, a list identifying each Physician and the scope of privileges granted by DS. It is anticipated that this complement of physicians may change from time to time. In that event the following procedures shall apply:
(a) Action by DS: DS shall provide OS with a revised Schedule 1 indicating the name of any new Physicians and an accompanying delineation of privileges. If DS has removed a Physician from the roster of physicians anticipated to provide Contracted Services going forward or if the DS telemedicine entity physician loses privileges, DS will provide a revised Schedule 1.

(b) Action by OS upon Receipt of New Schedule from DS: OS shall confirm the physicians listed on Schedule 1 can provide Contracted Services by signing and faxing the updated Schedule to DS.

If the only changes were removals, OS agrees that DS may remove the Physician(s) without waiting for a signed Schedule 1 to be returned.

(c) Action by OS to Initiate Removal of a Physician. If OS no longer wishes to receive Contracted Services from a Physician for reasons not requiring a hearing, OS will request that DS remove the Physician from the roster, following which, DS will supply an updated Schedule 1 as described in Section 6(a).

7. Credentialing-Related Materials. DS shall provide electronic copies of credentialing materials and other reasonable evidence of DS’s compliance with the OS Standards. However, DS will not provide OS or its agent a copy of any information it receives from the National Practitioner Data Bank or Healthcare Integrity and Protection Data Bank.

8. Provision and Confidentiality of Quality Related Data.

(a) OS Duties. OS shall provide DS evidence of its internal review of each DS-affiliated physician’s performance of the privileges, for use in DS’s periodic appraisal of the physicians. The governing body of the OS shall, in its sole discretion, determine the frequency of such periodic assessments of DS telemedicine services hereunder. At a minimum, this information must include:

(i) all adverse events that result from a physician’s Contracted Services provided to OS patients, and

(ii) all complaints OS has received about the Physician.

If OS is a critical access hospital, OS is responsible for periodic evaluation and quality assurance reviews that comply with 42 CFR 485.641(b)(4)(v).

(b) As required by law, the OS shall make such periodic assessments available to the DS upon reasonable request, in a time and manner consistent with clinical quality and patient safety.
9. **Confidentiality.** The parties shall treat all credentialing information shared pursuant to Section 6 and all quality-related information shared pursuant to Section 8 as privileged and confidential. Such information is to be used for credentialing, quality improvement, and peer review activities only. Each party shall ensure that no portion of any materials or information received from the other party are disclosed by it or its agents to any employee or third party for reasons unrelated to evaluating the physician’s quality and credentials to provide Contracted Services, except as required by law. It is understood that disclosure of such OS peer review documents to DS does not waive any privileges or protections afforded such documents by law.

10. **Term and Termination.** This Agreement shall continue from the Effective Date until terminated by either party as provided, below:

   (a) **Upon Notice.** Either party may terminate without cause on at least 30 days prior written notice to the other party.

   (b) **Termination upon Material Breach.** A non-breaching party may terminate this Agreement for cause at any time upon 30 days’ written notice of intent to terminate. In the event the defaulting party cures such default within such 30 day notice period, the non-breaching party may elect, at its discretion, to rescind the termination notice in writing, in which case this Agreement shall continue in full force and effect.

11. **Legislative/Regulatory Modification.** If any law, regulation or standard is enacted, promulgated, or modified in a manner that, in the opinion of a party’s legal counsel (i) prohibits, restricts or in any way materially affects this Agreement; (ii) subjects either OS or DS to a fine or penalty in connection with its representations or responsibilities hereunder, or (iii) subjects either party to a loss of Medicare or Medicaid certification or other accreditation bodies because of the existence of this Agreement or the applicable party’s representations or performance of obligations hereunder, then within 30 days following notice from one party to the other, the parties shall complete the good faith negotiation of an amendment to this Agreement or a substitute agreement that will carry out the original intention of the parties to the extent possible in light of such law, regulation or standard and each party shall execute such amendment or new agreement.

   If the parties cannot reach agreement on new terms within 60 days following the notice provided hereunder or such earlier date as necessary to avoid substantial penalties or fines, then this Agreement shall immediately terminate, following written notice of termination from either party.

12. **Indemnification.** Each of the parties shall indemnify and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, attorneys’ fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement by either of the Parties, or by their respective employees, subcontractors or agents.
13. **Notice.** Any notice required by this Agreement shall be in writing and shall be deemed to have been properly given to a party (i) if hand delivered, (ii) if delivered overnight by courier service, effective on the first business day following delivery to such carrier, or (iii) if sent certified mail, return receipt requested, effective three (3) days after deposit in the United States mail, addressed to the address below or as the parties may designate by giving notice pursuant to this Section:

    ABCD Originating Site Hospital       WXYZ Distant Site Hospital
    5555 First Street                   1111 Main Avenue
    Public City, ND 00000               Anytown, NY 00000

14. **Third-Party Beneficiaries.** This Agreement shall not confer any benefit or rights upon any person other than OS and DS, and no third party shall be entitled to enforce any obligation, responsibility or claim of any party to this Agreement.

15. **Other Agreements.** This Agreement, including all exhibits hereto, contains the entire understanding and agreement of the parties with respect to the credentialing and privileging of DS radiologists. In the event of a conflict between a provision contained in this Agreement and a provision contained in an agreement or arrangement that existed prior to the Effective Date of this Agreement, the terms of this Agreement shall control and govern the actions of the parties.

16. **Services Not Applicable.** This Agreement only applies to Contracted Services provided directly to the patient and does not apply to informal consultation among physicians or practitioners, by whatever communications media the physicians or practitioners choose to use.

17. **Counterparts.** This Agreement may be executed by facsimile signature or encrypted, digital signature, and by either of the parties in counterparts, each of which will be deemed to be an original, but all such counterparts will constitute a single instrument.

    IN WITNESS WHEREOF, the undersigned parties hereto have executed this Physician Credentialing and Privileging Agreement effective as of the latter of the dates signed.

    ABCD Originating Site Hospital       WXYZ Distant Site Hospital

    Signature                           Signature

    Print Name and Title                Print Name and Title
List of Physicians Privileged

The undersigned accept, attach, and incorporate this Schedule 1 into the Credentialing Agreement executed between OS and DS. This Schedule 1 replaces the previous Schedule 1.

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Click here to register for CTeL December Brown Bag: Oklahoma Telemedicine Prescribing Encounter: A Cautionary Tale?

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- CTeL’s 50 State Survey on Medicaid Reimbursement Policies (July 2013)
- BYOD and Privacy: Does Your Institution Have a Policy? What if It Doesn’t? (May 2013)
- Does your Telemedicine Equipment Configuration Meet FDA Standards (April 2013)
- FCC Officials Discuss Healthcare Connect Fund Order (February 2013)
- The FCC’s Telemedicine Funding Initiative-What Could It Mean for You? (January 2013)
- FCC Program to Reduce the Cost of Broadband for Health Care: What’s New? (December 2012)
- How Can You Minimize Risk and Avoid Liability Under Health Care Fraud and

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Every week, CTeL mails out an e-newsletter full of latest tips and trends in the telehealth,
CMS Telemedicine Credentialing

- For example, a small critical access hospital wants to contract with a distant-site telemedicine entity for teleradiology or mental health services
  - The contract could be with a Medicare certified hospital (which are usually the larger hospitals) or
  - It could be with a teleradiology facility, ASC, imaging center, group of psychiatrist, ENT physicians or dental offices
- The agreement with the required provisions are signed
  - The process would be as follows depending on which one was selected to contract with
Hospital A Contracts with Medicare Hospital

- Example 1 is where the CAH or a small and rural hospital contracts with a Medicare-certified hospital
  - Usually distant-site hospital (DSH) is a big hospital or Medical Center
- Step 1: The CAH or small hospital’s board makes sure there is a written agreement with the distant-site hospital
  - The written contract or agreement must state that it is the responsibility of the distant-site hospital to meet the credentialing requirements in the hospital CoPs regulations
Hospital A Contracts with Medicare Hospital

- For PPS hospitals this is section 42 CFR 482.12(a)(1) through (a)(7) and for CAH is 42 CFR 485.616(c)(i) through (c)(vii)

- Step 2 The Medical Staff from the small or CAH makes its recommendations on telemedicine privileges
  - The staff at the small hospital may rely on the information from and the credentialing decisions of the big distant-site hospital
  - The DSH or DSTE uses a C&P process that meets the Medicare standards that hospitals have traditionally used
Hospital A Contracts with Medicare Hospital

- The distant-site practitioner must be credentialed and privileged (C&P) at their distant-site to provide telemedicine services.
- And the big distant-site hospital gives the small hospital a copy of that physician’s current privileges.
- Step 3 The practitioner from the distant-site has to be licensed in the state in which the CAH or small hospital is located or be recognized by that state to do telemedicine.
Hospital A Contracts with Medicare Hospital

- The written agreement must also state the physician or practitioner holds a license or is recognized by the Medical Board in that state
- Usually not an issue if both hospitals are in the same state
- Many states (State Medical Board) now have a streamlined process for telemedicine providers who practices in many states

- Step 4 The Board approves the recommendations from the Medical Staff for C&P
Example of State Law on Telemedicine

4731.296 Telemedicine certificate.

(A) For the purposes of this section, “the practice of telemedicine” means the practice of medicine in this state through the use of any communication, including oral, written, or electronic communication, by a physician located outside this state.

(B) A person who wishes to practice telemedicine in this state shall file an application with the state medical board, together with a fee in the amount of the fee described in division (D) of section 4731.29 of the Revised Code and shall comply with sections 4776.01 to 4776.04 of the Revised Code. If the board, in its discretion, decides that the results of the criminal records check do not make the person ineligible for a telemedicine certificate, the board may issue, without examination, a telemedicine certificate to a person who meets all of the following requirements:

(1) The person holds a current, unrestricted license to practice medicine and surgery or osteopathic medicine and surgery issued by another state that requires license holders to complete at least fifty hours of continuing medical education every two years.

(2) The person's principal place of practice is in that state.

(3) The person does not hold a certificate issued under this chapter authorizing the practice of medicine and surgery or osteopathic medicine and surgery in this state.

(4) The person meets the same age, moral character, and educational requirements individuals must meet under sections 4731.08, 4731.09, 4731.091, and 4731.14 of the Revised Code and, if applicable, demonstrates proficiency in spoken English in accordance with division (E) of section 4731.29 of the Revised Code.

(C) The holder of a telemedicine certificate may engage in the practice of telemedicine in this state.
4731-10-11 Telemedicine Certificates.

(A) A telemedicine licensee’s registration group shall be based on the first letter of his or her last name at the time of initial telemedicine licensure. Each licensee shall remain in their originally assigned license registration group for all subsequent license renewals. If a telemedicine certificate is converted, pursuant to paragraph (E) of section 4731.296 of the Revised Code, to a certificate issued under section 4731.29 of the Revised Code the licensee shall remain in the same registration group as at the time of initial telemedicine licensure.

(B) An initial telemedicine certificate shall be valid until the renewal date for the telemedicine licensee’s registration group. If initial telemedicine licensure is granted on or after the first day of the eighteenth month of a registration period, the licensee shall not be required to renew for that registration period but shall be required to renew for all subsequent registration periods.

(C) An applicant for an initial telemedicine certificate or for renewal of a
Hospital A Contracts with Medicare Hospital

- **Step 5** The small or CAH has evidence of an internal review of the distant-site practitioner’s performance or privileges.

- **Step 6** The small or CAH must send the big distant-site hospital performance information so the large distant-site hospital can use this information in the periodic appraisal of the distant practitioner.
  - This must include any adverse event that result from services provided to the CAH or small hospital.
  - This includes any complaints the small hospital has received about the distant practitioner.
Hospital A Contracts with Medicare Hospital

- Hospitals will need to develop a new agreement to meet the provisions of this new law

- CMS discussed in the comment section that the written agreement or contract with the distant-site should also allow the CAH or small or rural hospital
  - Access to the complete credentialing and privileging file
  - Upon request for each practitioner who is covered by the agreement
Distant-site Telemedicine Entity DSTE

- There is no definitions in the final regulation of distant-site telemedicine entity of DSTE (but there is in the interpretive guidelines)

- However, there is a definition in the introductory commentary section (Page 4 of 16)

- A DSTE is an entity that
  - Provides telemedicine services
  - Is not a Medicare-certified hospital and
  - Provides contracted services in a manner to enable the CAH or hospital using their services to meet the required CMS CoP requirements
Distant-site Telemedicine Entity DSTE

- An example could be a freestanding large teleradiology practice
- Similar to the process with a Medicare-certified hospital
- Example Number 2 would be a CAH or small and rural hospital that contracts or has a written agreement with a DSTE
- Step 1: Step 1: The CAH or small hospital’s board makes sure there is a written agreement with the DSTE
Distant-site Telemedicine Entity DSTE

- Step 1 The written agreement (Continues)
  - The written contract or agreement must state that it is the responsibility of the DSTE or distant-site telemedicine entity to meet the credentialing requirements in the hospital CoPs regulations
  - For PPS hospitals this is section 42 CFR 482.12(a)(1) through (a)(7) and for CAH is 42 CRF 485.616(c)(i) through (c)(vii)
Distant-site Telemedicine Entity DSTE

- Step 2 The Medical Staff from the small or CAH makes its recommendations on telemedicine privileges
  - The staff at the small hospital may rely on the information from and the credentialing decisions of the DSTE
  - The distant-site practitioner must be privileged at the distant site to provide telemedicine services and the DSTE gives the small hospital a copy of the physician’s privileges
Distant-site Telemedicine Entity DSTE

- Step 3 The practitioner from the DSTE has to be licensed in the state in which the CAH or small hospital is located or be recognized by that state to do telemedicine
  - Usually not an issue if both the hospital and the DSTE are in the same state
  - Many states now have a stream lines process for telemedicine providers who practices in many states
- Step 4 The Board approves the recommendations from the Medical Staff for C&P
Distant-site Telemedicine Entity DSTE

- Step 5 The small or CAH has evidence of an internal review of the distant-site practitioner’s performance or privileges.

- Step 6 The small or CAH must send the DSTE performance information so they can use this information in the periodic appraisal of the distant practitioner.
  - This must include any adverse event that resulted from services provided to the CAH or small hospital.
  - This includes any complaints the small hospital has received about the distant practitioner.
In the case of an agreement with a distant-site telemedicine entity,

The agreement must also state that the entity is a contractor of services to the hospital or CAH,

Which furnishes contracted telemedicine services in a manner that permits the hospital or CAH to comply with all applicable CoPs,

This is important because CMS does not have any jurisdiction over many of the DSTE and they do not participate in Medicare unlike a hospital that is Medicare certified.
Have a Policy on Telemedicine

- Have a policy on Telemedicine Services
- AHIMA has recommendation on what should be in the policy
  - Called Telemedicine Services and the Health Record
  - Located at www.ahima.org under body of knowledge dated 5/15/2013
  - AHIMA stands for Health Information Management Association
- Make sure staff are educated on what is in the policy
- Ensure compliance with the policy
Telemedicine Services and the Health Record (Updated)

Editor's Note: This practice brief supersedes the April 1997 practice brief "Telemedical Records."

Telemedicine is a rapidly growing industry in the medical practice. Telemedicine is defined as telecommunications systems that link healthcare organizations and patients from diverse geographic locations and transmit text, data, and images for (clinical) consultation and treatment. This is seen as a cost-effective alternative to treating patients face-to-face, especially for patients living in rural communities. Telemedicine presents challenges to healthcare providers in ensuring that integrity and confidentiality are maintained, as well as ensuring the physician's scope of practice is within the legal statutes set forth by the state where the physician is practicing medicine. Providers must determine the individual responsible for documenting the information and how that information is shared.

This practice brief outlines the challenges of telemedicine, the planning for these services, and the best practices to ensure the clinical integrity of telemedical records. It is designed to support and guide organizations, health information management (HIM) professionals, and providers to understand, support, and execute best practices managing the telemedicine process.

Background

Telemedicine is a two-way, real time interactive communication between the patient and the physician at a remote site.

The delivery mechanisms include networked programs to link hospitals and clinics; point-to-point connections to deliver services directly or outsourced to independent providers; monitoring center links for in-home monitoring and other patient care services; and web-based e-health patient service sites for consumers.

"Closely associated with telemedicine is the term 'telehealth,' which is often used to encompass a broader definition of remote healthcare that does not always involve clinical services. Videoconferencing, transmission of still images, e-health including patient portals, remote monitoring of vital signs, continuing medical education and nursing call centers are all considered part of telemedicine and telehealth."

1
Recommendations for P&P

Policy and Procedures
Develop appropriate policies and procedures for telemedical services before starting a program to ensure consistency in the documentation by both the physician and patient. A sample outline follows:

For Hospital or Physician
- Introduction
- References
- Scope
- Procedures
- Orientation/Training of Staff
- Using the Equipment
- Orienting the Member to Telemedicine
- Confidentiality/Privacy
- Video Recording of Telemedicine Services
- Clinical Record Keeping
- Medication Prescriptions
- Appropriate Telemedicine Services
- Reporting Telemedicine Statistics
- Technical Quality of Telemedicine
- Prioritization of Clinical Telemedicine
- Monitoring

For Provider
- Application
- Overview
- Reimbursement
- Telehealth Services
- Modifiers
- Telephone Calls
- Internet Services
- Definitions
- Q & A
- Codes & Explanation
- Attachments
- References
CAH

- CMS makes an exception for CAH

- CAH requirement states that all agreements for clinical services may be made **only** with a Medicare-participating provider or supplier

- Since some telemedicine entities do not participate in Medicare an exception was created so CAH could participate

- This also includes the outside quality review that would be done by the outside entity that conducts the review of the distant-site physicians who are providing the telemedicine services
CAH CoPs

- Added some of the same language on C&P that is present in the PPS manual in the board section,

- Added to the Provision of Services and Quality Assurance section

- The CAH decides what categories of individuals are eligible for appointment to the medical staff
  - Physicians who are MDs and DOs, podiatrists, dentists, etc.

- The board appoints eligible candidates to the medical staff after considering the recommendations of the MS

- Board is to make sure MS has MS by-laws
CAH CoPs

- Board must approve both the MS by-laws and the MS rules and regulations (R&R)
- The MS is accountable to the board or governing body for the quality of care provided to the patients
- Must make sure the criteria for selection to the MS is based on individual character, competence, training, experience, and judgment
  - And not on staff membership or the fact there are board certified or membership in a specialty body or society
- Similar to language in hospital CoP manual
Peer Review Issue

- Step 6 talks about the agreement with both a Medicare-certified hospital or a distant-site telemedicine entity.

- Both require the small rural or CAH to send the distant-site performance information that the distant-site will use in the periodic performance of the practitioner.

- This must include adverse event and complaints.

- This information is what is generally considered to be peer review protected material.
Peer Review Issue

- Peer review protections vary from state to state
- Hospitals should review their specific state peer review statute and case law in your state
- Hospitals should consult with their in-house legal counsel or outside legal counsel
- The written agreement should include language to assure ongoing protection of the peer review information
- Attached is a website that lists all the state’s peer review laws
List of Peer Review Statutes by State

So How Do You C&P Providers?

[Provider Application form image]
# Texas Standardized Credentialing Application

(please type or print)

## Section I - Individual Information

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## Education

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<th>PROFESSIONAL DEGREE (MEDICAL, DENTAL, CHIROPRACTIC, ETC.)</th>
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The CAH or small or rural hospital has a duty to notify the distant-site hospitals of any complaints.

PPS hospitals currently have a regulation in the current CoP regarding grievances which starts at Tag 118.

Hospitals should be familiar with the grievance sections and the proposed changes.

CMS calls them grievances.

TJC calls them complaints under RI.01.07.01.
The hospital must have a process for prompt resolution of patient grievance

Patients should have a reasonable expectation of care and service

Hospital must inform each patient where to file a grievance
  - Consumer advocate, risk management department etc.
  - Provide phone number to contact designated person

Patients have the right to have their concerns addressed in a timely, reasonable, and consistent manner
A-0118

(Rev. 37, Issued: 10-17-08; Effective/Implementation Date: 10-17-08)

§482.13(a)(2) The hospital must establish a process for prompt resolution of patient grievances and must inform each patient whom to contact to file a grievance.

Interpretive guidelines §482.13(a)(2)

The patient should have reasonable expectations of care and services and the facility should address those expectations in a timely, reasonable, and consistent manner. Although 482.13(a)(2)(ii) and (iii) address documentation of facility time frames for a response to a grievance, the expectation is that the facility will have a process to comply with a relatively minor request in a more timely manner than a written response. For example, a change in bedding, housekeeping of a room, and serving preferred food and beverage may be made relatively quickly and would not usually be considered a "grievance" and therefore would not require a written response. The hospital must inform the patient and/or the patient's representative of the internal grievance process, including whom to contact to file a grievance (complaint). As part of its notification of patient rights, the hospital must provide the patient or the patient's representative a phone number and address for lodging a grievance with the State agency. The hospital must inform the patient that he/she may lodge a grievance with the State agency (the State agency that has licensure survey responsibility for the hospital) directly, regardless of whether he/she has first used the hospital's grievance process.

A “patient grievance” is a formal or informal written or verbal complaint that is made to the hospital by a patient, or the patient’s representative, regarding the patient’s care (when the complaint is not resolved at the time of the complaint by staff present), abuse or neglect, issues related to the hospital’s compliance with the CMS Hospital Conditions of Participation (CoPs), or a Medicare beneficiary billing complaint related to rights and limitations provided by 42 CFR 489.

- "Staff present" includes any hospital staff present at the time of the complaint or who can quickly be at the patient's location (i.e., nursing, administration, nursing
Hospital Grievance Procedure 122

- Hospital must have a P&P on grievance
- Specific time frame for reviewing and responding to the grievance
- Grievance resolution that includes providing the patient with a written notice of its decision, IN MOST CASES
- The written notice to the patient must include the steps taken to investigate the grievance, the results and date of completion
CMS Interpreters

- Remember CMS has a patient rights section
- There are 90 million Americans with low health literacy
  - Remember to write things in a manner patients can understand
  - Many read at a sixth grade level
- There are 50 million Americans whose primary language is not English
  - Have an interpreter when needed
  - Be sure to document use of an interpreter
Additional Resources

- Attached you will find additional resources which include
  - The Joint Commission standards under both the leadership chapter and the Medical Staff chapter
  - Slides to show the changes from CMS in each section for both PPS hospitals and critical access hospitals
  - The CoPs memo on telemedicine amends the current hospital CoP manuals
The End

Questions?

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- Board Member
  Emergency Medicine Patient Safety Foundation
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- Additional slides with each CMS Cop section number
MS.13.01.01 Telemedicine TJC

- Called C&P by proxy

- Original site (where patient is located) is allowed to accept the C&P of the distant site (where the radiologist or practitioner is located)

- Must follow all state and federal laws such as make sure practitioner is licensed in that state

- Will reduce the C&P burden for original site or the small and rural or CAH hospitals

- Recognized the distant site (big Hospital) has more relevant information to base its C&P decisions
Recognized that the small hospitals or originating site may have little experience in privileging these specialties

Also see EC.02.04.01 and .03 to make sure there is appropriate use of telemedicine equipment and that the equipment is maintained

Telemedicine is defined as the use of medical information exchanged from one site to another via electronic communications for the health and education of the patient or health care provider and for the purpose of improving patient care, treatment, and services. Source: American Telemedicine Association.
MS.13.01.01: LIPs who are responsible for the care, and treatment of the patient via telemedicine link are subject to C&P processes of the originating site:

- EP1 Originating site fully C&P the practitioners under the MS standards according to MS.06.01.01 through MS.06.01.13

- These are the final changes reflected in the January 2012 TJC Perspective
MS.13.01.01 Telemedicine  TJC

- EP2 Originating site privileges practitioner using credentialing information from the distant-site if the
  - Distant-site is TJC accredited facility
  - The distant site practitioner has a license that is issued or recognized by the state in which the patient is receiving telemedicine services (revised wording)

- EP3 Originating site may choose to use the C&P decisions from the distant site if all the following are met (new wording)
  - Distant site is a TJC accredited hospital or an ambulatory care organization
MS.13.01.01 Telemedicine

- Distant site must do the following (continued)
- Practitioner is privileged at the distant-site for what they want to do at the originating site
- Distant site provides a list of privileges to the originating site with a current list of LIP privileges (DS)
- Originating site has evidence of internal review done of the practitioner’s performance and sends to the distant site information that is useful to assess the practitioners quality of care and treatment for use in privileging
MS.13.01.01 Telemedicine

- Must include any adverse outcomes related to sentinel events and considered reviewable by TJC
- Must communicate complaints to the distant-site
- The distant-site practitioner has a license that is issued or recognized by the state in which the patient is receiving telemedicine services
This must occur in a way consistent with any hospital P&P intended to preserve confidentiality or privilege of information established by law.

- Such as peer review

If contracting with accredited ambulatory facility the hospital must verify that the distant site made its decisions using the process described in the MS standard discussed above.
Just like in the leadership standard

The originating site makes certain that all distant-site telemedicine providers’ credentialing and privileging processes meet, at a minimum, meet the CMS CoP hospital manual

This includes section 482.12(a)(1) through (a)(9) and 482.22(a)(1) through (a)(4)
§482.12(a) Standard: Medical Staff. The governing body must:

(1) Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff;

Interpretive Guidelines §482.12(a)(1)

The governing body must determine, in accordance with State law, which categories of practitioners are eligible for appointment to the medical staff.

The medical staff must, at a minimum, be composed of physicians who are doctors of medicine or doctors of osteopathy. In addition, the medical staff may include other types of health care professionals included in the definition of a physician in Section 1861(r) of the Social Security Act:

- Doctor of medicine or osteopathy;
- Doctor of dental surgery or of dental medicine;
- Doctor of podiatric medicine;
- Doctor of optometry; and
- a Chiropractor.
The Board determines which categories of practitioners are eligible for appointment to the MS such as physicians, dentists, podiatrists, etc.

Changed this section to say that the MS could include other types of healthcare professionals in the definition besides physicians.

This is here because the Social Security Act when it defines physician it includes podiatrists, dentist, optometrists, chiropractors, and not just an MD or a DO.
Board Chapter MS Issues A-0045

- Board have flexibility to determine whether other healthcare professionals are eligible for appointment to the medical staff

- Board can appoint some types of non-physician practitioners to the MS such as PA, NP, CNS (clinical nurse specialist), CRNA, CNMW (certified nurse midwife), CSL (clinical social worker), clinical psychologist, or registered dietician or nutrition professional

- Other types of licensed professionals have a more limited scope of practice and are not eligible for hospital MS privileges
§482.12(a) Standard: Medical Staff. The governing body must:

(8) Ensure that, when telemedicine services are furnished to the hospital’s patients through an agreement with a distant-site hospital, the agreement is written and that it specifies that it is the responsibility of the governing body of the distant-site hospital to meet the requirements in paragraphs (a)(1) through (a)(7) of this section with regard to the distant-site hospital’s physicians and practitioners providing telemedicine services. The governing body of the hospital whose patients are receiving the telemedicine services may, in accordance with §482.22(a)(3) of this part, grant privileges based on its medical staff recommendations that rely on information provided by the distant-site hospital.

(9) Ensure that when telemedicine services are furnished to the hospital’s patients through an agreement with a distant-site telemedicine entity, the written agreement specifies that the distant-site telemedicine entity is a contractor of services to the hospital and as such, in accordance with §482.12(e), furnishes the contracted services in a manner that permits the hospital to comply with all applicable conditions of participation for the contracted services, including, but not limited to, the requirements in paragraphs (a)(1) through (a)(7) of this section with regard to the distant-site telemedicine entity’s physicians and practitioners providing telemedicine services. The governing body of the hospital whose patients are receiving the telemedicine services may, in accordance with §482.22(a)(4) of this part, grant privileges to physicians and practitioners employed by the distant-site telemedicine entity based on such hospital’s medical staff recommendations; such staff recommendations may rely on information provided by the distant-site telemedicine entity.
Hospital CoP A-0052  Board

- Tag 52 was a new tag number
- Board must make sure that a **written agreement** is done if telemedicine is furnished
- Written contract or agreement must specify that it is the responsibility of the board of the distant-site hospital to meet all the requirements we have discussed previously
- Board where patients are receiving the telemedicine services may grant privileges based on the MS recommendation and the MS can rely on the information provided to them from the DSH
Hospital CoP A-0052  Board

- Written agreement or contract must say that the DSTE is a contractor of services and as such must furnish it in a manner that permits the hospital to comply with all of the applicable CoPs.

- This includes, but is not limited to, the **7 requirements** of this section; which categories of practitioners are eligible for MS privileges, appoint MS after considering recommendation of existing members of the MS, have bylaws and R/R, MS is accountable for the quality of care, must be based on character, competence, training and can’t base is solely on certification, or fellowship.
The board can then grant privileges to the physicians and practitioners at the DSTE or DSH based on the MS recommendation and the MS is allowed to rely on the information from that site.

Provides a definition of telemedicine

Telemedicine means the provision of clinical services to patients by physicians and practitioners from a distance via electronic communications. The distant-site telemedicine physician or practitioner provides clinical services to the hospital patient either simultaneously, as is often the case with teleICU services, for example, or non-simultaneously, as may be the case with many teleradiology services.
Hospital CoP A-0052 Board

- Simultaneously is in real time such as the E-ICU
- Non-simultaneously is not in real time in which services are involved after the fact like reading a CT scan by a radiologist
  - Information is communicated to the attending physician who uses the information to make a diagnosis and plan of treatment
- CMS provides a definition of what is a distant-site telemedicine entity (DSTE)
  - DSTE would include a hospital that does not participate in the Medicare program
Definition of DSTE under Tag A-0052

- Definition of distant-site telemedicine entity (DSTE) is an entity that
  - 1. Provides telemedicine services
  - 2. Is not a Medicare-participating hospital and
  - 3. Provides contracted services in a manner that
      enables a hospital using its services to meet all applicable CoPs
      - Particularly those requirements related to the
        C&P of practitioners providing telemedicine services to the patients of a hospital
Hospital CoP A-0052  Board

- Any hospital that enters into an agreement with a DSH or DSTE must be sure it is in writing.

- DSH must make sure board satisfies the 7 requirements with respect to the physicians and practitioners who furnish telemedicine services.
  
  - This has to be done even though the other hospital is a Medicare certified hospital and must comply with these standards also.
Hospital CoP A-0052 Board

- DSTE must specifically say that the board will also satisfy the 7 requirements and must furnish the services in a manner to permit the hospital to comply with the CMS CoPs.
- There are other requirements that the board must put in the contract.
- These are contained in the MS section.
- Remember to have a MS bylaw that allows the medical staff to rely on the decisions of the distant site entity.
Hospital CoP A-0052 Board

- When the board uses the streamlined process in which the MS made the recommendation based on relying on the distant-site entity and the board approved this, the hospital:
  - Does not need to maintain a separate file on each practitioner.
  - May instead have a file on all telemedicine practitioners providing services to the hospital.

- Privileging by proxy is an option and not a requirement.

- Hospital can elect to do full C&P.
Board could require the MS to independently review the credentials and make privileging recommendations (But why would you???)

Surveyor will ask to see a written copy of the contract if you use telemedicine services

Surveyor will make sure it contains all of the elements

Will look to see that hospital has the documentation to show that privileges were granted

Must show if relied on or if conducted its own review
§482.22(a) Standard: Composition of the Medical Staff

The medical staff must be composed of doctors of medicine or osteopathy and, in accordance with State law, may also be composed of other practitioners appointed by the governing body.

Interpretive Guidelines §482.22(a):

The medical staff must at a minimum be composed of physicians who are doctors of medicine or doctors of osteopathy. In addition, the medical staff may include other healthcare professionals included in the definition in Section 1861(r) of the Social Security Act of a physician:

- Doctor of medicine or osteopathy;
- Doctor of dental surgery or of dental medicine;
- Doctor of podiatric medicine;
- Doctor of optometry; and a
- Chiropractor.

In all cases, the healthcare professionals included in the definition of a physician must be licensed.
Composition of the MS  A-0339

- The MS must be composed of doctors of medicine or osteopathy, as in accordance with state law, and may be composed of other practitioners as appointed by the board.

- Added that MS may also include other healthcare professionals as previously discussed.

- Board has the flexibility to determine whether healthcare professionals other that physicians are eligible for appointment to the MS.
  - Such as NP, PA, CNM, CRNA, RD, etc.
§482.22(a)(3) When telemedicine services are furnished to the hospital’s patients through an agreement with a distant-site hospital, the governing body of the hospital whose patients are receiving the telemedicine services may choose, in lieu of the requirements in paragraphs (a)(1) and (a)(2) of this section, to have its medical staff rely upon the credentialing and privileging decisions made by the distant-site hospital when making recommendations on privileges for the individual distant-site physicians and practitioners providing such services, if the hospital’s governing body ensures, through its written agreement with the distant-site hospital, that all of the following provisions are met:

(i) The distant-site hospital providing the telemedicine services is a Medicare-participating hospital.
The board can do full C&P or the board can allow the MS to **rely** on the C&P decisions of the other hospital.

- Board must have a **written contract** or agreement to do this if all of the following are met:
  - Allowed if DSH is a Medicare hospital
  - The physician is privileged at the other hospital and provides a list of privileges allowed
  - Physician has a license in the state
Board must have a written contract or agreement to do this if all of the following are met (continued);

– Hospital has evidence of an internal review of the performance information of the physician and

– Sends the performance information for use in the periodic appraisal of the distant-site physician or practitioner

– This information must include all adverse events and complaints that result from the telemedicine services provided by the distant-site physician
It is important to note that if the distant hospital participated in the Medicare program and their Medicare is terminated at any time during the agreement.

Hospital may **no** longer receive telemedicine services.

**List of physicians** providing services must be current and cannot include any physician who no longer is C&P by the distant-site hospital.
§482.22(a)(4) When telemedicine services are furnished to the hospital’s patients through an agreement with a distant-site telemedicine entity, the governing body of the hospital whose patients are receiving the telemedicine services may choose, in lieu of the requirements in paragraphs (a)(1) and (a)(2) of this section, to have its medical staff rely upon the credentialing and privileging decisions made by the distant-site telemedicine entity when making recommendations on privileges for the individual distant-site physicians and practitioners providing such services, if the hospital’s governing body ensures, through its written agreement with the distant-site telemedicine entity, that the distant-site telemedicine entity furnishes services that, in accordance with §482.12(e), permit the hospital to comply with all applicable conditions of participation for the contracted services. The hospital’s
Medical Staff Tag  A-0343

- Repeats similar information as from Board section
- The board can have the MS rely on the decision of the other hospital
- If the board has a written agreement with the distant-site entity
- That permits the hospital to comply with all of the applicable CoPs for the contracted service
- Same requirements as before; meet the standards, licensed, have current list of privileges, internal review of performance and report complaints and AEs
(Rev.)

[The bylaws must:

§482.22(c)(6) - Include criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges. For distant-site physicians and practitioners requesting privileges to furnish telemedicine services under an agreement with the hospital, the criteria for determining privileges and the procedure for applying the criteria are also subject to the requirements in §482.12(a)(8) and (a)(9), and §482.22(a)(3) and (a)(4).

Interpretive Guidelines §482.22(c)(6)

All patient care is provided by or in accordance with the orders of a physician or practitioner who meets the medical staff criteria and procedures for the privileges granted, who has been granted privileges in accordance with those criteria by the governing body, and who is working within the scope of those granted privileges.

Privileges are granted by the hospital’s governing body to individual practitioners based on the medical staff’s review of that individual practitioner’s qualifications and the medical staff’s recommendations for that individual practitioner to the governing body. The hospital’s governing body shall
The bylaws include criteria for determining privileges and a procedure for applying the criteria to individuals requesting privileges.

Need an order for patient care by one who meets MS criteria and procedures for privileges.

Criteria for providing distant-site privileges is also governed by this section.

Board can do full C&P or rely on the distant-site entity under an agreement.

Change the bylaws to allow this.
State Operations Manual
Appendix W - Survey Protocol, Regulations and Interpretive Guidelines for Critical Access Hospitals (CAHs) and Swing-Beds in CAHs

(Rev.)

* * *

C-0196

[§485.616 Condition of Participation: Agreements]

(c) Standard: Agreements for credentialing and privileging of telemedicine physicians and practitioners.

(1) The governing body of the CAH must ensure that, when telemedicine services are furnished to the CAH’s patients through an agreement with a distant-site hospital, the agreement is written and specifies that it is the responsibility of the governing body of the distant-site hospital to meet the following requirements with regard to its physicians or
CAH C-0196  Agreements for C&P

- Board must make sure it has a written agreement with a distant-site entity in order to do telemedicine

- Must do 7 things;
  - Make sure consistent with state law categories of practitioners eligible for appointment to the MS
  - Board appoints members of the MS
  - Must make sure MS has bylaws
  - Board must approve bylaws and R/R
CAH 196  Agreements for C&P

- Must do 7 things (continued);
  - MS is accountable to the board for the quality of care provided to patients
  - Ensure that MS selected is based on individual character, competence, training, experience, and judgment
  - MS membership can be based solely upon certification, fellowship or membership in a specialty body or society
Board with written agreement can rely on C&P of distant-entity

Repeats similar provisions as discussed in the previous slides

- Board makes sure has current list of privileges
- Makes sure distant-site physician has a license
- Must have evidence of internal review of the physician’s performance of their privileges
- Must send information to entity for use in the periodic appraisal of the distant-site physician like AE and complaints
CAH 196   Agreements for C&P

- Includes definition of telemedicine
- Discussed non-simultaneously and simultaneous as previously discussed
- CAH must enter into a written agreement to do telemedicine and must specify that it is the responsibility of the distant-site to conduct the C&P of physicians and practitioners providing telemedicine services
- Must follow state laws, have bylaws, ensure MS is accountable for the quality of care for patients
C-0197

[(c) Standard: Agreements for credentialing and privileging of telemedicine physicians and practitioners.]

(3) The governing body of the CAH must ensure that when telemedicine services are furnished to the CAH’s patients through an agreement with a distant-site telemedicine entity, the agreement is written and specifies that the distant-site telemedicine entity is a contractor of services to the CAH and as such, in accordance with §485.635(c)(4)(ii), furnishes the contracted services in a manner that enables the CAH to comply with all applicable conditions of participation for the contracted services, including, but not limited to, the requirements in this section with regard to its physicians and practitioners providing telemedicine services.

(4) When telemedicine services are furnished to the CAH’s patients through an agreement with a distant-site telemedicine entity, the CAH’s governing body or responsible individual may choose to rely upon the credentialing and privileging decisions made by the governing body of the distant-site telemedicine entity regarding individual distant-site physicians or practitioners. The CAH’s governing body or responsible individual must ensure, through its written agreement with the distant-site telemedicine entity, that the following provisions are met:

(i) The distant-site telemedicine entity’s medical staff credentialing and privileging process and standards at least meet the standards at (c)(1)(i) through (c)(1)(vii).

(ii) The individual distant-site physician or practitioner is privileged at the distant-site telemedicine entity providing the telemedicine services, which provides a current list to the
Service Provided Thru Agreements C-0285

C-0285

§485.635(c) Standard: Services Provided Through Agreements or Arrangements

(1) The CAH has agreements or arrangements (as appropriate) with one or more providers or suppliers participating under Medicare to furnish other services to its patients, including—

(5) In the case of distant-site physicians and practitioners providing telemedicine services to the CAH’s patients under a written agreement between the CAH and a distant-site telemedicine entity, the distant-site telemedicine entity is not required to be a Medicare-participating provider or supplier.

Interpretive Guidelines §485.635(c)(1) & (c)(5)

All agreements for providing health care services to the CAH’s patients must be with a provider or supplier that participates in the Medicare program, except in the case of an agreement with a distant-site telemedicine entity for the provision of telemedicine services. The agreements should describe routine procedures (e.g., for obtaining outside laboratory tests); and there should be evidence in the agreement or arrangement that the governing body (or responsible individual)
(4) The quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the CAH are evaluated by—

(i) One hospital that is a member of the network, when applicable;

(ii) One QIO or equivalent entity;

(iii) One other appropriate and qualified entity identified in the State rural health care plan;

(iv) In the case of distant-site physicians and practitioners providing telemedicine services to the CAH’s patients under a written agreement between the CAH and a distant-site hospital, the distant-site hospital; or
CAH has an effective QA program to evaluate the quality and appropriateness of the diagnosis and treatment provided and of treatment outcomes.

Must have a written agreement to provide telemedicine services.

All CAH must have an arrangement with an outside entity to review the appropriateness of the diagnosis and treatment provided.

This includes physicians who do telemedicine services.
- Some CAH also prefer to conduct their own internal review in addition to the outside review

- Regulation does not specify the frequency of the outside review

- CAH and the outside entity must reach a mutual agreement as to the frequency of the outside review

  - Entities eligible to provide this outside review include, for MDs and DOs who provide services on-site at the CAH, a hospital that is a member of the same rural health network as the CAH; a Medicare QIO, or its equivalent; or another appropriate and qualified entity identified in the State’s Rural Health Plan to perform this function
The distant-entity that is a Medicare hospital is the outside entity responsible for reviewing the quality of care provided by the telemedicine physicians.

If distant entity is a DSTE then the outside entity to review the quality of care for telemedicine is a hospital that is a member of the same rural network as the CAH, a QI or its equivalent, or another appropriate and qualified entity identified in the State’s Rural Health Plan.
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Thank you for attending!!

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