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Barriers to Care Removed, but State Obstacles Still in Place: The Future of Telemedicine in Washington State

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In early May of this year, the Centers for Medicare and Medicaid Services ("CMS") removed a giant obstacle in provision of telemedicine services. Recognizing that its rules and regulations regarding telemedicine services were "duplicative and burdensome,"[1] CMS amended its Conditions of Participation ("CoPs"), implementing a new credentialing and privileging process for physicians and practitioners providing telemedicine services. But what these changes mean for practitioners and medical facilities in Washington is yet to be seen.

Background

Before the new telemedicine credentialing and privileging process became effective, a small hospital was faced with the onerous task of privileging what could be dozens of specialty physicians and practitioners providing telemedicine services to its patients from larger medical centers. Before the CMS revisions, the CoPs for hospitals and critical access hospitals ("CAHs") required that the governing body of a hospital or CAH make privileging decisions based on recommendations from its medical staff.[2] Before issuing a recommendation, the medical staff was required to examine the credentials of candidates for medical staff membership.[3] This process applied to all practitioners at the hospital – including physicians and practitioners who provided radiology reads and telemedicine services over video teleconferencing.

Over the years, the credentialing and privileging of telemedicine providers has created tension between CMS and the Joint Commission. The Joint Commission took a more lenient stance, allowing the practice of "privileging by proxy"[4] under which the "originating site" (the site where the patient is located at the time the service is provided) was allowed to accept the credentialing and privileging decisions of the "distant site" (the site where the

practitioner providing the professional service is located) under special circumstances. CMS, however, disagreed with this approach. After years of direct conflict with CMS, the Joint Commission revised its privileging standards to bring them into compliance with the CoPs. After nearly a decade of tension, however, it appears that the two entities are now becoming more closely aligned. With CMS's revisions to the CoPs, the Joint Commission has again adopted a more flexible approach to the credentialing and privileging of telemedicine providers.[5]

Breaking Down Barriers

The revised CoPs now allow hospitals and CAHs to rely on the credentialing and privileging decisions of either Medicare-certified hospitals or other telemedicine entities, regardless of whether they are Medicare-certified hospitals. In order to rely on these entities, however, the hospital or CAH must have a written agreement with the distant-site facility that meets certain requirements.

If a hospital or CAH engages the services of a medical entity not certified by Medicare ("distant-site telemedicine entity"), the hospital or CAH must take an additional step. Besides maintaining a written agreement, the hospital or CAH must also ensure that the distant-site telemedicine entity furnish services only in a manner that enables the hospital or CAH to comply with all applicable CoPs for the contracted services.[6]

Application Within Washington

Without changes in Washington's current statutory scheme, it is difficult to determine to what extent medical facilities will fully appreciate CMS's relaxed telemedicine credentialing and privileging process. Under Washington law, hospitals have a duty to request certain information from a physician seeking privileges.[7] This information includes a number of items, such as the reason for any discontinuation of privileges, pending professional misconduct proceedings or professional malpractice actions, and the substance of any findings in any medical misconduct or malpractice action, to name a few.[8] The hospital must also seek similar information from any other hospital where the physician maintains, or had maintained, privileges.[9] By requiring this inquiry, however, the benefits of CMS's revised credentialing and privileging process are negated.

Conclusion

With CMS's removal of "unnecessary barriers" in the telemedicine arena, CMS is hoping that the relaxed credentialing and privileging requirements will ultimately improve the quality of patient care,[10] all the while allowing hospitals to conserve resources while maintaining an adequate breadth of specialty services. Though these objectives are worthwhile, it is difficult to know what impact this more lenient process will have within Washington. For hospitals to take full advantage of the new regulations, the Washington State legislature, the Department of Health, or both will likely have to act.

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Notes:

[1]Medicare and Medicaid Programs: Changes Affecting Hospitals and Critical Access Hospital Conditions of Participation: Telemedicine Credentialing and Privileging, 76 Fed. Reg. 25,550, 25,551 (May 5, 2011).
[2]*See* 42 C.F.R. § 482.12(a)(2); 42 C.F.R. § 482.22(a)(2).
[3]42 C.F.R. § 482.22(a)(2).
[4]76 Fed. Reg. 25,550.
[5]The Joint Commission, "Medical Staff," *in Comprehensive Accreditation Manual for Hospitals: The Official Handbook* 13.01.01 (Mar. 2011).
[6]42 C.F.R. § 482.22(a)(4); 42 C.F.R. § 485.616(c)(3).
[7]RCW 70.41.230.
[8]RCW 70.41.230(1).
[9]RCW 70.41.230(2).
[10]76 Fed. Reg. 25,550.