



Telehealth Credentialing and Privileging Final Rule from Centers for Medicare and Medicaid Services

By: Greg Billings
Senior Director
Center for Telehealth and e-Health Law

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Acknowledgements

Greg T. Billings is Senior Director to the Center for Telehealth and e-Health Law. As Senior Director, Greg advises members in the telehealth community on legal and regulatory issues impacting the field of telehealth.

Before joining CTeL, Greg was a senior Senate Democratic aide and served as deputy chief-of-staff to both former Senate Democratic Leader Tom Daschle (D-S.D.) and Sen. Tim Johnson (D-S.D.). Greg also served as deputy staff director to the Senate Democratic Policy Committee, as well as chief-of-staff to the Administrator of the Farm Service Agency within the U.S. Department of Agriculture. In addition, Greg developed and managed an online business through which he marketed technology and telecommunications services focused on assisting clients in establishing a sales force and building a customer base.



Welcome to CTeL

The Center for Telehealth & e-Health Law (CTeL) was founded in 1995 to overcome the legal and regulatory barriers to the utilization of telehealth and related e-health services. CTeL, formerly known as the Center for Telemedicine Law, was created under the vision and leadership of a number of individuals and organizations, including Dr. Yadin David, Bob Waters, the Mayo Foundation, the Cleveland Clinic, the Midwest Rural Telemedicine Consortium, and the Texas Children's Hospital.

CTeL has established itself as a leader in the telehealth community and is known for its ability to compile and analyze complex legal, regulatory and public policy information. CTeL provides vital support to the community by providing critical analysis and information on legal and regulatory issues on topics such as reimbursement, licensure, telecommunications, FDA regulations, privacy, and accreditation.

For additional information about the Center for Telehealth & e-Health Law, please feel free to contact us at:

Center for Telehealth & e-Health Law
1500 K Street, NW
Suite 1100
Washington, DC 20005-3317
202.230.5090 | Fax 202.230.5300
info@ctel.org | www.ctel.org



CMS Final Rule Credentialing and Privileging Telehealth Practitioners

On May 5, 2011, the Centers for Medicare and Medicaid Services (CMS) released its final rule making changes to CMS's Conditions of Participation (CoPs) as they pertain to the credentialing and privileging of telehealth providers. The final rule permits both hospitals and critical access hospitals (CAHs) to utilize a new process to credential and privilege telehealth providers.

This final rule is the culmination of more than a year long effort by CMS and the telehealth industry to establish a workable procedure to permit originating-site hospitals (the location of the patient) to rely upon and accept the credentialing and privileging decisions of the distant site entity (the location of the practitioner).

In order to comply with CMS's CoPs, originating-site hospitals would have been required to fully credential and privilege each telemedicine practitioner, just as if that practitioner was present physically in the facility, had this rule not been proposed by CMS.

CMS issued its proposed rule nearly one year ago (May 26, 2010) and invited public comment through the rulemaking process. The final rule reflects the CMS response to the public comments received through the rulemaking process. The effective date of the provisions in this rule is July 5, 2011.

The final rule can be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-05-05/pdf/2011-10875.pdf>

Overview

CMS will add new provisions to the credentialing and privileging process to require the originating site's governing body (or the CAH's governing body or responsible individual) "to ensure that the distant-site telemedicine [hospital or] entity, acting as a contractor of services, furnishes its services in a manner that enables the hospital (or CAH) to comply with all applicable conditions of participation and standards for the contracted services, including, but not limited to, the credentialing and privileging requirements regarding its physicians and practitioners providing telemedicine services."

Through a required written agreement, the new CMS provisions will allow the originating-site hospital to rely upon the decisions made by the "distant-site telemedicine entity" when making credentialing and privileging decisions for individual, distant-site practitioners providing telemedicine services.



The originating-site hospital, through this written agreement, must ensure that the medical staff's credentialing and privileging processes and standards at the distant-site telemedicine entity "meets or exceeds the [CMS] standards."

CMS took an additional step in the final rule, largely in response to the comments they received to the proposed rule. The proposed rule limited the use of credentialing and privileging decisions to those between Medicare-participating hospitals. Recognizing the contributions of non-Medicare participant entities to the delivery of telehealth services, such as teleradiology, teleICU, and teleneurology, CMS now provides that these entities may be included in the optional, credentialing and privileging process with originating site hospitals and CAHs.

Hospital Conditions of Participation

CMS provides for these credentialing and privileging changes to be made in two separate CoPs: §482.12 (Governing Body) and §482.22 (Medical Staff).

Regarding changes to the Governing Body CoPs, the final rule includes a new paragraph [§482.12 (a) (8)] which allows the originating site's governing body "to grant privileges based on its medical staff recommendations, which would rely on information provided by the distant-site hospital."

This paragraph also stipulates that the agreement between the originating-site hospital and the distant-site hospital must specify that "it is the responsibility of the governing body of the distant-site hospital providing telemedicine services to meet the existing requirements in §482.12 (a) (1) through (a) (7) with regard to its physicians and practitioners who are providing telemedicine services."

The final rule also makes changes to the Medical Staff CoPs [§482.22 (a) (3)] by allowing the originating-site's governing body "to have its medical staff rely upon information furnished by the distant-site hospital when making recommendations on privileges for the individual physicians and practitioners providing such services."

This provision allows the originating-site's medical staff to rely upon the distant-site hospital's credentialing and privileging decisions rather than follow the current regulations which require that the medical staff conduct individual appraisals and examine each candidate's credentials before making a privileging recommendation to the originating-site's governing body.

It is important to note that this rule does not preclude use of any credentialing and privileging option, including conducting periodic appraisals of telemedicine practitioners or using the traditional credentialing and privileging process.



Hospitals choosing to use this new option for privileging must provide for the following:

1. The distant-site hospital is a Medicare-participating hospital.
2. The distant-site practitioner is privileged at the distant-site hospital.
3. The distant-site hospital provides a current list of the practitioner's privileges.
4. The distant-site practitioner holds a license issued or recognized by the state in which the originating-site hospital is located.
5. The originating-site hospital has an internal review of the distant-site practitioner's performance and provides this information to the distant-site hospital.
6. Information sent from the originating-site to the distant site must include all adverse events and complaints from telemedicine services provided by the distant-site practitioner to the originating-site hospital's patients.

Telemedicine Entities

In order to permit originating-site hospitals to rely upon the credentialing and privileging decisions of non-hospital entities providing telemedicine services (e.g. teleradiology, teleICU, and teleneurology), CMS added new provisions to address the credentialing and privileging process and the agreements between hospitals or CAHs and distant-site telemedicine entities. [§482.12 (a) (9) and §482.22 (a) (4) for hospitals; §485.616 (c) (3) and (c) (4) for CAHs].

The written agreement between the originating-site and the distant-site telemedicine entity must provide that the telemedicine entity is furnishing its services in a manner that allows the originating-site hospital or the CAH to comply with all applicable conditions of participation and standards.

The governing body of the originating-site hospital must ensure that the contractor of services to the hospital (distant-site telemedicine entity) provides services that comply with all applicable CoPs and standards for contracted services.

Background on Credentialing and Privileging of Practitioners

Current CMS regulations require a hospital to have a credentialing and privileging process in place for all practitioners providing services to its patients. CMS regulations do not factor in whether those practitioners are providing only telemedicine services.

Specifically, CMS's current regulations require a hospital's governing body to "appoint all practitioners to its hospital medical staff" and to grant privileges using the medical staff's recommendations. The hospital's medical staff must follow CMS's regulations regarding credentialing and privileging to make its recommendations. As a result, CMS's regulations require hospitals to apply credentialing and privileging requirements as if all practitioners were



physically onsite. The hospital governing body is required to make all privileging decisions based on medical staff recommendations after 1) credentials have been examined and verified and 2) staff has determined whether the practitioner should receive hospital privileges. (42 CFR §482.12 (a) (2) and §482.22 (a) (2))

CAH operate in a similar manner by requiring that every CAH, which is a member of a rural health network review all practitioners (whether onsite or practicing telemedicine) seeking CAH privileges by utilizing an agreement between the CAH and a hospital that is a network member, a Medicare Quality Improvement Organization, or another qualified entity in the State's rural health plan. These CMS requirements can be found at 42 CFR §485.616 (b).

The Joint Commission Telemedicine Standards

In 2004, The Joint Commission (TJC or JC) implemented standards for the credentialing and privileging of telehealth practitioners. These standards allowed JC-accredited hospitals to rely on the credentialing and privileging decisions of other JC-accredited facilities for practitioners providing telemedicine services. This process was commonly referenced as "credentialing and privileging by proxy."

Despite these JC standards being in effect for a number of years, credentialing and privileging by proxy was not recognized by CMS as having met or exceeded the Medicare CoPs. The proposed rule noted, "Hospitals that have used this method to privilege distant-site medical staff technically did not meet CMS requirements that applied to other hospitals even though they were JC-accredited. When CMS learned of specific instances of such noncompliance, through on-site surveys by State Survey Agencies, the hospital was required to change its policies to become compliant."

Previously, TJC's statutory "deeming" authority provided that JC-accredited hospitals were "deemed to have met the Medicare CoPs," including credentialing and privileging. However, in 2008, legislation passed by Congress terminated TJC's statutorily-recognized hospital accreditation program, effective July 15, 2010 (Medicare Improvements for Patients and Providers Act of 2008--PL 110-275). Because CMS must now approve the standards TJC will use to confer deemed status on hospitals, TJC was required to come into compliance with CMS's CoPs, including full credentialing and privileging of all telemedicine practitioners.

Anticipating that the final rule would address these issues, CMS twice extended TJC's authority to continue their telemedicine standards for credentialing and privileging. The current extension runs through July 1, 2011, with time for TJC to transition their accreditation program to meet the new CMS telemedicine credentialing and privileging regulations contained in the final rule.



**Excerpt from CTeL Report:
Credentialing and Privileging Proposed Rule from
Centers for Medicare and Medicaid Services
June 2010**

Input from the Telemedicine Community

This decision to require each originating hospital to credential and privilege each telemedicine practitioner quickly became the most pressing obstacle facing the future of telemedicine. It was clear that it threatened telemedicine programs from two angles:

- First, the impact on often smaller, originating site hospitals without the financial or staffing resources to implementing full credentialing and privileging on all telemedicine practitioners. Additionally, for these smaller facilities, many felt this change would impact patient safety. Most often, an originating site hospital sought a specialist through telemedicine because they did not have that expertise on staff. Yet, in order to grant privileges in accordance with CMS's CoPs, these same hospitals would be called upon to render a professional judgment on these same telemedicine practitioners who they sought out because they didn't have that expertise on staff.
- Second, is the issue of the credentialing and privileging process on the telehealth practitioners themselves. For many telemedicine programs, credentialing and privileging at each originating site would be a significant bureaucratic and financial burden. The initial reaction to the CMS decision was the possibility of the termination of telemedicine programs because the physicians themselves did not want to undergo what they viewed as duplicative, credentialing and privileging at multiple originating sites.

Over the course of a year, there were many attempts by the telemedicine community to raise the level of visibility with CMS, Congressional representatives, and Executive Branch officials. Some of these activities included:

- Rep. Richard Boucher (D-VA), a senior member of the House Energy and Commerce Committee (one of the House Committee's with health care jurisdiction) spearheaded a letter signed by other members of the House of Representative to CMS alerting agency officials to the impact of the CMS CoPs on the delivery of telemedicine and urging the agency's reconsideration of implementing a credentialing and privileging policy that would severely impact telemedicine programs nationwide.

The Telehealth Leadership Initiative collected the signatures of over 375 individuals on a similar letter to CMS.



- Reps. Mike Thompson (D-CA), Bart Stupak (D-MI), Sam Johnson (R-TX), and Terry Lee (R-NE) introduced HR 2068, the Medicare Telehealth Enhancement Act of 2009. HR 2068 included a number of provisions pertaining to telehealth, including a section on the telehealth credentialing and privileging issue. Even though it wasn't included in the final health care reform bill, credentialing and privileging language was included in the final health care reform version passed by the House of Representatives.
- Senator Tom Udall (D-NM) introduced an amendment to the Senate version of health care reform that included language intended to delay the impact of the July 15th deadline and direct CMS to engage in rulemaking to provide a streamlined process for credentialing and privileging telemedicine providers.
- Lead by Dr. Karen Rheuban, President of the American Telemedicine Association and CTeL Board member, CTeL and ATA attended two high level meetings with CMS officials. These included a meeting arranged by Rep. Boucher with the top Obama Administration CMS appointee, Marilyn Tavenner. As Principal Deputy Administrator, Ms. Tavenner is the second ranking official within CMS. The Center for Telehealth and e-Health Law (CTeL) attended in a technical advisory capacity.

In addition, a meeting was held between telehealth officials and Mr. Jonathan Blum, the CMS Director for Medicare Management.

- At the direction of Administrator Tavenner and the invitation of Dr. Rheuban, Dr. Barry Straube, CMS's Chief Medical Officer and Director of the Office of Clinical Standards & Quality, and Jeannie Miller, Deputy Director, Clinical Standards Group, traveled to the University of Virginia (UVA) to hear directly from officials from a telemedicine program about the process for credentialing and privileging telehealth practitioners and the impact of the CMS decision. In attendance at this meeting were officials from the ATA, CTeL, top officials from a critical access hospital, members of the UVA telemedicine network, and other UVA officials, such as the chairman of the UVA credentialing and privileging committee and UVA's teleradiology program.

At this meeting, telemedicine leaders made clear to CMS officials that there were two serious problems with the CMS policy for the telemedicine community:

1. The looming July 15, 2010 deadline when TJC telemedicine guidelines were no longer permitted.
2. The long term issue of how to credential and privilege telehealth practitioners at the originating site, given the complexities of the process and the facilities involved.