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Medical Staff Member on Hospital Boards: Limits in New CoPs

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Last month, CMS issued new conditions of participation (“CoPs”) for hospitals and critical access hospitals (“CAHs”) to be effective July 16, 2012. (77 F.R. 29034, dated 5/16/12). Among others, 42 CFR § 481.12 will require that the hospital's governing board “must include a member, or members, of the hospital's medical staff.” We have confirmed with CMS, however, that there are limits to this new requirement.

1. Does Not Apply to CAHs. The new requirement only appears in the hospital CoPs, not in the corresponding CAH CoPs. (See 42 CFR 485.627). The new requirement for physician participation on the hospital's governing body was not intended to apply to CAHs.

2. Does Not Apply Where State Law Establishes Board Membership. In some cases, state or local laws may control board membership. For example, state law may require that board members of county hospitals or hospital districts are elected or appointed by another government agency. The new CoPs were not intended to preempt such laws. In such cases, the CoPs regarding medical staff representation on the governing body would not apply, and CMS would expect the hospital to follow the laws of its particular locality.

3. The Physician May Serve in a Non-Voting Capacity. Even where they do apply, the new CoPs do not specify how hospitals should choose the medical staff representative, nor do they specify the particular role that the medical staff representative should fill on the governing body. CMS intends that hospitals have flexibility in addressing these issues. For example, the hospital may appoint the physician to the board in a non-voting or ex officio capacity. Limiting the physician board member's voting rights may be appropriate given conflicts of interest that a physician board member may have since many board decisions will directly impact the physician's practice.

We understand that CMS may be taking action to clarify these issues for providers.

For questions regarding this Update, please contact

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