

Kim Stanger

Partner 208.383.3913 Boise kcstanger@hollandhart.com

Medical Staff Member on Hospital Boards: Limits in New CoPs

Medical Staff Member on Hospital Boards: Limits in New CoPs

Insight — 6/8/2012

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

Kim Stanger

Holland & Hart, U.S. Bank Plaza, 101 S. Capitol Boulevard, Suite 1400, Boise, ID 83702-7714



email: kcstanger@hollandhart.com, phone: 208-383-3913

This news update is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author. This news update is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.