CMS Tightens Medicaid Managed Care Supplemental Pay

The Centers for Medicare & Medicaid Services (CMS) released a January 17 final rule limiting states’ ability to increase or create new pass-through payments for hospitals, physicians or nursing homes under Medicaid managed care contracts. CMS previously allowed a 10-year phase-out of these pass-through payments, from 2017 to 2027. However, the new final rule clarifies that, for state pass-through payment programs to qualify for the 10-year transition period, they must have been in place as of July 5, 2016.

The rule changes the transition periods for the pass-through payments that were first established by CMS’ May 2016 Medicaid managed care final rule. When the comprehensive managed care final rule was published last May, CMS assured states that because of the size, number and complexity of hospital pass-through payments, they would have a 10-year transition, beginning in 2017 and ending in 2027, to phase out these payments. However, under this new final rule version, states cannot add new or increase current pass-through payment programs for hospitals, physicians and nursing facilities beyond what was included in their Medicaid managed care contracts on or before July 5, 2016.

Specifically, the final rule requires a state to demonstrate that it had pass-through payments for hospitals, physicians or nursing facilities on or before July 5, 2016 in order to be able to use the phase-down transition period. States can demonstrate they have eligible pass-through payment programs in one of two ways:

- The pass-through payments were included in Medicaid managed care contracts for the rating period that includes July 5, 2016 and submitted to the agency for approval by July 5, 2016; or
- The pass-through payments were included in managed care contracts for a rating period prior to July 5, 2016 and submitted to CMS for approval by July 5, 2016.

The final rule also will prohibit states from making retroactive adjustments to increase any existing pass-through payments prior to their phase-out. Specifically, to further prevent new or increased pass-through payments, CMS restricts the amount of permitted pass-through payments for each year of the transition period by establishing a new maximum amount. This new maximum amount is tied to the pass-through amount (supplemental hospital payment amount) identified in the contract period on or before July 5, 2016.

White River Medical Center Gets ACGME Approval

On Friday, January 13 White River Medical Center (WRMC) received notification from the Accreditation Council for Graduate Medical Education (ACGME) that the WRMC Internal Medicine (IM) Residency Program had received approval. The WRMC IM program is the only Arkansas ACGME-accredited IM residency program that exists outside of the UAMS system. The ACGME Internal Medicine Review Committee (IM RC) described WRMC’s IM residency program
as “unique and innovative” in its approach to residency training. The sponsorship and leadership of a residency program in a community hospital in affiliation with an academic medical center (UAMS) that employs technology (e-learning, live access to UAMS Grand Rounds, UAMS’ assistance in faculty development and provision CME to WRHS, etc.) distinguishes this program from other rural programs in the nation. Gary Bebow, White River Health System CEO, expressed his appreciation to UAMS for its assistance and leadership during the application process.

The physician recruitment and selection process is underway. WRMC will fully participate in the national “Match” and anticipates filling its 10 IM spots with excellent candidates for the upcoming academic year, beginning July 1, 2017.

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CMS Emergency CoP Education

On September 8, 2016, the Centers for Medicare & Medicaid Services (CMS) finalized a rule to establish consistent emergency preparedness requirements for healthcare providers participating in Medicare and Medicaid; increase patient safety during emergencies; and establish a more coordinated response to natural and man-made disasters. These new requirements mandate that certain participating providers and suppliers plan for disasters and coordinate with federal, state, tribal, regional and local emergency preparedness systems to ensure that facilities are adequately prepared to meet the needs of their patients during disasters and emergency situations.

The final rule requires these providers and suppliers to meet four standards: emergency plan; policies and procedures; communication plan; and a training and testing program. The rule becomes effective November 16, 2017.

The Arkansas Hospital Association will host a webinar on Tuesday, January 31 from 12:00-1:30 p.m. to cover the standards and provide tools to help you discover the gaps in your current emergency preparedness plan. For more information on this webinar, and to register, visit http://www.arkhospitals.org/calendarpdf/1-31-17CMSEmergencyCoPs.pdf. Please contact Anna Sroczynski at (501) 224-7878 or asroczynski@arkhospitals.org with questions.

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Advancing Health Equity

The National Academies of Sciences, Engineering, and Medicine issued a January 11 report, “Communities in Action: Pathways to Health Equity,” which reinforces the importance of advancing health equity and the goals of the American Hospital Association’s #123forEquity Pledge Campaign, an effort to eliminate health and healthcare disparities that continue to exist for many racially, ethnically and culturally diverse individuals, in order to ensure that every person in every community receives high-quality, equitable and safe care.

Nationwide, 1,436 organizations have signed the #123forEquity Pledge to Act, committing to working to achieve the National Call to Action to Eliminate Health Care Disparities’ goals, which aim at ensuring equitable, safe care is delivered to all. In Arkansas, the Arkansas Hospital Association (AHA) and 18 hospitals have signed the pledge to date and all AHA members are encouraged to consider taking the equity pledge on the Equity of Care website (http://www.equityofcare.org/).

As part of this continued effort to highlight the importance of advancing community-based solutions to address this issue, the Institute for Diversity in Health Management on January 31 will host a webinar in which experts will share best practices related to inclusive, local hiring that will help

Arkansas hospitals which have signed the pledge are:

- Baptist Health Extended Care Hospital
- Baptist Health Medical Center-Arkadelphia
- Baptist Health Medical Center-Heber Springs
- Baptist Health Medical Center-Hot Spring County
- Baptist Health Medical Center-Little Rock
- Baptist Health Medical Center-North Little Rock
- Baptist Health Medical Center-Stuttgart
- Baptist Health Rehabilitation Institute
- CHI St. Vincent Hot Springs
- CHI St. Vincent Infirmary
- CHI St. Vincent Morrilton
- CHI St. Vincent North
- CHRISTUS Dubuis Hospital of Fort Smith
- NEA Baptist Memorial Hospital
- Ouachita County Medical Center
- Saline Memorial Hospital
- St. Bernards Medical Center
- St. Vincent Rehabilitation Hospital

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**National Cyber Incident Response Plan**

The Department of Homeland Security has released a National Cyber Incident Response Plan (NCIRP) to articulate the roles and responsibilities, capabilities and coordinating structures that support how the nation responds to and recovers from significant cyber incidents posing risks to critical infrastructure. The plan was developed in coordination with other federal agencies and public and private partners, including representatives from the healthcare and public health sector. “The NCIRP is not a tactical or operational plan; rather, it serves as the primary strategic framework for stakeholders to understand how federal departments and agencies and other national-level partners provide resources to support response operations,” the document notes.

To read the plan, click on [https://www.us-cert.gov/ncirp](https://www.us-cert.gov/ncirp).

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**Federal Appeals Panel Ponders NLRB Decision**

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit on January 18 heard oral arguments in a case brought by Menorah Medical Center in Overland Park, KS, to overturn a 2015 National Labor Relations Board (NLRB) decision that directly threatens the confidentiality of the hospital peer review process.

In August 2015, the NLRB ruled that the Kansas hospital violated the *National Labor Relations Act* by denying two nurses’ requests for a union representative when they appeared before its nursing peer review committee, and by failing and refusing to provide information requested by the union relating to the peer review process.

Rejecting the hospital’s contention that allowing a union representative to accompany employees to nursing peer review committee meetings would interfere with legitimate employer objectives, the NLRB found that the employees “reasonably believed that discipline was a possible outcome when they appeared before the [committee], and therefore, by continuing their interviews after denying the employees’ requests for a union representative,” the hospital violated the law.

Concurrently, the board also rejected the hospital’s argument that the requested information is confidential because the deliberations of a peer review body are protected by a state law privilege, saying the hospital “failed to establish a legitimate and substantial confidentiality interest in any of the requested information.” The hospital argued before the appeals panel that the NLRB erroneously...
required it to produce peer review documents to the union; incorrectly struck down the hospital’s rule requiring confidentiality of discussions at peer review proceedings; and required the hospital to permit direct participation in the peer review process by third-party union representatives that could risk a general waiver of peer review privilege.

During the appeal hearing, Judge Brett Kavanaugh, in direct questioning of NLRB counsel, focused on peer review as an essential way to monitor and improve healthcare delivery and the importance of strict confidentiality to its success, quoting directly from a friend-of-the-court brief filed by the American Hospital Association (AHA), Federation of American Hospitals, state hospital associations in Kansas and Texas, Texas Nurses Association and American and Texas Organizations of Nurse Executives. AHA, the Kansas and Texas Hospital Associations and Texas Nurses Association had previously supported the hospital before the board.

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**eCQM Reporting Period for 2016 Data Extended**

CMS has extended through March 13 the deadline for eligible hospitals participating in the Hospital Inpatient Quality Reporting and/or Medicare Electronic Health Records (EHR) Incentive Program to submit electronic Clinical Quality Measure (eCQM) data for the calendar year (CY) 2016 reporting period to avoid a 2.7% payment adjustment in fiscal year 2018. The original deadline was February 28. The extension applies to eCQM submissions for the Medicare EHR Incentive Program that are reported by attestation or electronically. All other aspects of eCQM reporting requirements for CY 2016 remain the same.

Successful submission continues to be defined as reporting on at least four eCQMs using EHR technology certified to the 2014 or 2015 edition of EHR certification criteria. The reporting must be a combination of Quality Reporting Document Architecture Category I files, zero denominator declarations and/or case threshold exemptions.

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**The AHA Calendar**

**January 2017**

24  How 2016 HIPAA Enforcement & Guidance Should Inform Compliance Efforts in 2017 – Webinar T4004

25-27    HFMA TriState Winter Institute, Sheraton Memphis Downtown Hotel, TN

26  Risks and Rewards of e-Communications and Social Media in Health Care – Part 1: Texts, Emails and Other Electronic Communications – Webinar T4005

26  2017 Medical Staff Leadership Series – A 4-Part Series – Part 2: Credentialing and Privileging

27  AAHE 2017 Winter Conference, Saline Memorial Hospital, Benton

31  CMS Emergency CoPs – Webinar MS013117

**February 2017**


9  2017 Medical Staff Leadership Series – A 4-Part Series – Part 3: Informal Remediation and Corrective Action


*Information on all AHA educational programs and activities is available at [http://www.arkhospitals.org/events](http://www.arkhospitals.org/events).*