Credentialing Telemedicine Providers

Provider Credentialing requirements raise important considerations in any telemedicine arrangement. The facility where care is received, renders a diagnosis, or otherwise provides clinical treatment to a patient, must assure that a telemedicine practitioner is appropriately credentialed and privileged in compliance with their credentialing process, CMS rules, and the requirements of applicable accreditation organizations such as the Joint Commission. The process for credentialing telemedicine providers should be addressed by the governing body and reflected in medical staff bylaws and formal credentialing policies.

Credentialing standards have been somewhat streamlined since CMS adopted new regulations that were effective in June of 2011. Even though the process has been simplified, credentialing of providers who perform telemedicine services to patients of a hospital is still an extremely important responsibility of the hospital board. CMS rules now permit “credentialing by proxy” provided that several conditions are met. It remains the responsibility of the board to determine when or if it wishes to rely on “credentialing by proxy” or whether it should apply full credentialing requirements on remote providers of telemedicine services.

In cases where credentialing by proxy is used, the Board must assure that appropriate policies are in place and that the CMS process is completely followed. For example, the Board should assure that a written agreement is in place with remote telemedicine providers that specifies the remote provider’s responsibilities for credentialing. Each additional requirement for relying on credentialing by proxy as described in further detail below must also be met on a continuing basis.

The board must also consider other issues such as potential liability for negligent credentialing
Failure to appropriately credential telemedicine providers can affect the ability to seek reimbursement and can raise potential fraud and abuse concerns. As a result, hospitals who use telemedicine should integrate telemedicine compliance issues, including credentialing requirements, into their compliance programs. Failure to closely follow Medicare rules can lead to sanctions, citations, and even substantial penalties for false and fraudulent billings.

**CMS Credentialing Rules Prior to June 2011**

Prior to the effective date of new regulations in June of 2011, CMS required all hospitals and critical access hospitals to fully credential all professionals providing services to its patients using telemedicine. All telemedicine related privileging decisions were required to be made by the governing body of the hospital based upon recommendations of its medical staff. Recommendations were only to be made after the medical staff applied specific criteria to determine whether an individual practitioner should be privileged at the hospital. In short, there was no abbreviated process which permitted the hospital to credential telemedicine providers by proxy based upon their privileges at a distance site.

Prior to July 2011, there was a conflict between CMS and Joint Commission policies regarding credentialing of telemedicine providers. Many hospitals relied on the more lenient Joint Commission requirements which permitted reliance on the credentialing decisions of a “remote” or “distant” site. Compliance with the Joint Commission standards resulted in “deemed” status under CMS rules without having to meet CMS’ specific rules on telemedicine credentialing. After the Joint Commission lost its deemed certification status in 2008, CMS discovered on audit that many providers were using the “privileging by proxy” method that had been permitted by Joint Commission standards to credential telemedicine providers. This discovery forced CMS to review its credentialing policies in light of the burden that it placed on smaller, rural hospitals. As a result, CMS issued new regulations to clarify and liberalize its credentialing requirements to permit “privileging by proxy,” provided that certain specific conditions are met. Providers are not mandated to use privileging by proxy and can continue to directly privilege telemedicine providers. However, the streamlined process simplifies the credentialing process and can be of benefit to many hospitals.

**Current CMS Credentialing Rules**

At the present time, CMS conditions of participation are the primary regulatory source governing the process of credentialing telemedicine providers. The Joint Commission has revised its requirements to be consistent with CMS rules. In regulations dated May 5, 2011 (effective July 5, 2011), CMS provided final regulations that somewhat streamline the credentialing process and which comply with the Medicare Conditions of Participation. CMS regulations give providers some options regarding credentialing of telemedicine including:

- Retaining complete credentialing of all telemedicine providers using the credentialing process that is applicable to all other medical staff members. The direct credentialing option is still the safest route for hospital’s to take from a liability standpoint.
• Rely on the credentialing decision of another Medicare certified hospital when granting telemedicine privileges, subject to certain specific conditions including entering into a written agreement with the other facility.

• Rely on the credentialing decisions of other “telemedicine entities” when granting telemedicine privileges, subject to certain conditions including entering into a written agreement.

In short, provided that all of the specific requirements contained in CMS regulations are met, a receiving hospital is permitted for purposes of Medicare participation to rely on the credentialing decisions that have been made by the “distant-site” telemedicine provider. Note, however, that when the other facility is located out of state, the provider will still need to independently verify licensure under Wisconsin law. The credentialing process conducted in a different state may not be a reliable source of assuring Wisconsin licensure. In most cases, the distant-site provider will require full Wisconsin licensure to perform and permit billing for the applicable service.

**Reliance On Distant-Site Hospital or Telemedicine Entity Credentialing**

The 2011 CMS regulation modified conditions of the participation for hospitals and critical access hospitals to permit the hospital to have its medical staff rely on the distant-site hospital credentialing decisions when making recommendations on privileges for individual physicians and practitioners providing telemedicine services. However, this process is only permitted when a number of conditions are met:

• The telemedicine services must be provided pursuant to a written agreement with the Medicare participating distant-site hospital or qualifying distant-site telemedicine entity.

• The agreement must specify that it is the responsibility of the governing body of the distant-site hospital to meet the existing requirements for credentialing of providers who are providing telemedicine service.

• The distant-site hospital providing the telemedicine services must be another Medicare participating hospital or a “telemedicine entity.”

• The distant-site physician or other practitioner must have been privileged at the distant-site hospital providing telemedicine services and the distant-site hospital must provide a current list of telemedicine physicians and practitioners who are privileged there and their current privileges at the distant-site hospital or entity to the hospital or CAH.

• The distance site practitioner must hold a license that is recognized by the state in which the hospital whose patients are receiving telemedicine services is located.
The hospital must have evidence of an internal review of the distant-site physician’s or practitioner’s performance under telemedicine privileges and must send this information to the distance site hospital for use in the distant-site hospital’s periodic appraisal of the distant-site physician’s provision of telemedicine services.

Information sent for use in the periodic appraisal must at a minimum have included all adverse events that resulted or could have resulted from telemedicine services provided by the distance site provider to the originating hospital’s patients and all complaints received by the originating hospital with respect to the distance site physician or practitioner.

**Distant-Site Telemedicine Entity Credentialing**

The ability to rely on third party credentialing is not limited to distant-site hospitals. The governing body of the hospital or critical access hospital whose patients are receiving telemedicine services may also choose to rely upon the credentialing and privileging decisions of a “telemedicine entity.” A telemedicine entity need not be a hospital that meets the conditions of participation under Medicare.

A distant-site telemedicine entity is defined as an entity that: (1) provides telemedicine services; (2) is not a Medicare-participating hospital; and (3) provides contracted services in a manner that enables a hospital or CAH using its services to meet all applicable Conditions of Participation (CoPs), particularly those requirements related to the credentialing and privileging of practitioners providing telemedicine services to the patients of the hospital or CAH.

In order to rely upon the credentialing decisions of distance-site telemedicine entities, the hospitals governing board must assure that all of the conditions that are applicable to Medicare participating Hospital providers are met. Additionally, the distance-site telemedicine entities credentialing and privileging process must meet at least the minimum standards applicable to the credentialing and privileging decisions of the hospital. A written agreement that contains specific minimum terms must also be entered with the telemedicine entity.

**Written Agreement With the Distant-Site Provider**

In order to rely on “credentialing by proxy,” the governing body of the hospital or critical access hospital receiving telemedicine services must assure that it has a written agreement in place with the distance telemedicine entity or hospital whose credentialing decision is being relied on “by proxy.” The agreement must designate the distant-site as a contractor of services and require that it furnishes services in a manner that enables the hospital to comply with all applicable conditions of participation including the credentialing privileging requirements regarding its physicians and practitioners providing telemedicine services.
CMS estimated that approximately 4,860 hospitals and 1,314 critical access hospitals were required to enter written agreements regarding the use of distant-site hospital telemedicine services as a result of the new requirement.

The agreement with the distant-site hospital or telemedicine entity must include requirements that:

- Distant-site hospital or telemedicine entities credentialing and privileging process at least meets the Medicare standards that hospitals have traditionally been required to use (found at 42 CFR 482.12(a) and 42 CFR 482.22(a));
- The distant-site hospital or telemedicine entity has granted privileges to the individual telemedicine physicians and practitioners providing telemedicine services to hospital/CAH patients;
- The distant-site telemedicine physicians or practitioners hold a license issued or recognized by the state where the hospital or CAH is located;
- The distant-site hospital or telemedicine entity must provide a list of telemedicine physicians and practitioners who are privileged there and their current privileges at the distant-site hospital or entity to the hospital or CAH;
- In the case of an agreement with a distant-site telemedicine entity, the agreement must also state that the entity is a contractor of services to the hospital or CAH which furnishes contracted telemedicine services in a manner that permits the hospital or CAH to comply with all applicable CoPs.

The hospital or CAH must review the services provided to its patients by telemedicine physicians and practitioners covered by the agreement and provide written feedback to the distant-site hospital or telemedicine entity, addressing, at a minimum, all adverse events or complaints related to the telemedicine services provided at the hospital or CAH.

**Governing Body Decision**

As the body with ultimate authority over provider credentialing, the hospital’s governing body should make a specific and deliberate decision whether to rely on “credentialing by proxy” or whether to require direct credentialing of telemedicine providers. Either way, the governing body must assure that appropriate procedures are in place to dictate credentialing of telemedicine providers. Hospitals may also need to examine their medical staff requirements to determine the impact they may have on telemedicine. Some medical staff requirements may inhibit the provision of telemedicine because of the existence of medical staff requirements that may be impossible for distant-site providers to meet. If so, the hospital may wish to provide a separate class of medical staff/clinical privileges that pertains to providers who only provide services using telemedicine. These items should be considered by the governing body with appropriate legal, physician, and administrative input.

**Provider Option Whether To Use “Full” Credentialing Process**
Hospitals and CAHs always have the option of credentialing and privileging the distant-site telemedicine practitioners using the traditional process. Hospitals and CAHs electing to use the traditional credentialing and privileging process may not be compelled by a distant-site telemedicine hospital (or distant-site telemedicine entity) to enter into an agreement that requires the use of the more streamlined approach as outlined here.

The governing body of each individual hospital and CAH must weigh the relative risks and benefits of whether to fully self-credential telemedicine providers or whether the use credentialing by proxy. Although regulations do not specifically address this approach, providers may adopt hybrids that incorporate some elements of credentialing by proxy but self-verify some issues such as state licensure, exclusion list queries, database queries, and other independent verification. There are many complex legal issues, including issues of liability, inherent to contracts and agreements between institutions and the reliance of processes conducted by others. These issues should all be addressed by the governing body when setting telemedicine policy.

For more information on the topic covered in this article or on other health care law issues, feel free to contact John H. Fisher, II, CHC, CCEP.