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## **GROUNDHOG'S DAY REGULATORY UPDATE: CMS Proposes Rule to Require Additional Notifications to Medicare Beneficiaries**

On February 2, 2011, health care providers and suppliers saw the shadow of additional regulatory requirements headed their way: the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule (Rule) that will require most Medicare certified providers and supplies to provide Medicare beneficiaries with written notice of their right to file a complaint with a Medicare Quality Improvement Organization (QIO). While the proposed change may not mean six more weeks of winter, it will require patient notice requirement changes and likely result in more patient complaints.

CMS' stated purpose in proposing the Rule is to ensure Medicare beneficiaries are informed of their right to file complaints about the care they receive with the QIO in their state. (In Virginia, the QIO is the Virginia Health Quality Center (VHQC)), unlike many recent regulatory changes tied to the health reform legislation, the Rule arises out of a 2006 Institute of Medicine recommendation and CMS' belief that Medicare beneficiaries remain unaware of their rights to complain.

In the Rule, CMS also proposes new requirements for certain Medicare providers and suppliers that would require them to provide all patients with state survey agency contact information. The proposed rule, if made final, will be incorporated in the Medicare Conditions of Participation for providers and the Conditions for Coverage for suppliers.

CMS proposes that providers and suppliers give Medicare beneficiaries written notice of their right to voice concerns to the QIO about the quality of care they receive at the start of care, or, for some providers and suppliers, at the time of inpatient admission or at an initial assessment visit in advance of care. As written, the Rule will apply to the following ten types of Medicare providers and suppliers:

- Ambulatory Surgical Centers
- Hospices
- Hospitals
- Long Term Care Facilities
- Home Health Agencies
- Comprehensive Outpatient Rehabilitation Facilities
- Critical Access Hospitals
- Clinics and Rehabilitation Agencies

- Portable X-ray Services; and
- Rural Health Clinics and Federally Qualified Health Centers.

CMS does not propose to require a specific format for the written notice, but does propose that the notice contain the name, telephone number, email address, and mailing address of the QIO. The Rule would also require Medicare providers and suppliers to document in the beneficiary's record that the provider or supplier presented the written notice to the beneficiary or his or her representative or surrogate, affecting admission or assessment procedures.

In addition to the QIO notice requirement, CMS proposes to require seven providers to provide all patients – not just Medicare beneficiaries – with state survey agency contact information. Virginia's state survey agency is the Virginia Department of Health, Office of Licensure and Certification (OLC). Ambulatory Surgical Centers, Nursing Facilities, and Home Health Agencies are already required to provide such contact information to patients and residents. The Rule would require that seven additional providers and suppliers notify patients of their right to complain to the OLC, including the following:

- Hospices
- Hospitals
- Comprehensive Outpatient Rehabilitation Facilities
- Critical Access Hospitals
- Clinics and Rehabilitation Agencies
- Portable X-ray Services; and
- Rural Health Clinics and Federally Qualified Health Centers.

As proposed, the OLC contact information notice must contain the name, telephone number, email address, and mailing address of the OLC.

CMS will accept public comment on the proposed regulation through April 4, 2011. CMS has specifically requested comments on whether providers and suppliers should give the required QIO notice at the conclusion of treatment or discharge, or perhaps after the Medicare beneficiary has experienced an adverse event. CMS anticipates providers and suppliers may incur up to \$69 million in additional costs to implement the Rule. This estimate does not figure in the cost of additional appeals that the notice may generate.

If our firm can be of assistance in this comment stage of the rule making process or in providing further interpretation of the proposed new rule, please let Peter Mellette, Harrison Gibbs, or Nathan Mortier know.