Proposed Revisions to Medicare Provider-Based Rules: Fewer Restrictions for On-Campus Facilities; Delay in Effective Date

In an apparent effort to alleviate some of the burdens placed on hospitals as a result of the Medicare program’s provider-based regulations which were issued on April 7, 2000 and were scheduled to go into effect for most hospitals on October 1, 2002, the Centers for Medicare and Medicaid Services (“CMS”) has issued proposed revisions which, as described below, delay the effective date of CMS’ provider-based requirements and significantly relax the requirements placed on on-campus provider-based departments and units.

With the introduction of the April 7, 2000 final rule, CMS adopted numerous restrictions and requirements designed to ensure that hospitals which claim provider-based status for their various departments and units are actually operating the departments and units as integrated entities subject to the hospitals’ ultimate control and direction.

After receiving countless comments, complaints and questions from the provider community, CMS proposed revisions to the provider-based regulations on May 9, 2002. These proposed revisions acknowledge that on-campus provider-based entities are naturally subject to a level of operational integration which does not necessitate the imposition of the same strict provider-based certification standards applicable to off-campus facilities. Therefore, as described below, many of the provider-based requirements previously imposed by CMS on all provider-based departments and units are now limited to off-campus departments and units.

**Effective Date**

In the new regulations, CMS has proposed delaying from October 1, 2002 to July 1, 2003, the regulations’ implementation date for facilities and organizations treated as provider-based prior to October 1, 2000. For providers that are newly seeking provider-based status, the providers are obligated to following the attestation procedures specified in the regulations and described below.

**The New Attestation Requirements**

The current provider-based regulations require that providers submit to CMS an application for provider-based status prior to billing as provider-based facility. Under the proposed regulations, the application process has been removed. The main provider of the on-campus facility must simply (1) submit an attestation to CMS certifying compliance with the provider-based requirements, (2) maintain documentation supporting provider-based compliance and (3) make available such documentation to CMS upon request.

**Reduced Ownership/Control/ Administration Requirements**

In the preamble to the proposed reg-

ulations, CMS states that a facility’s proximate “location relative to the main campus of the provider is relevant to the integration that is likely to exist between the facility or organization and the main provider.” Accordingly, CMS proposes to reduce or eliminate several requirements for on-campus facilities, including rules pertaining to ownership, control, and administration. CMS proposes that on-campus facilities need only satisfy the following: (1) operate under the same license as the main provider; (2) have clinical services that are integrated with the main provider; (3) be fully financially integrated with the main provider; (4) hold itself out to the public as a department of the main provider; and (5) comply with the federal anti-dumping (EMTALA) requirements. With respect to off-campus or remote facilities, CMS has proposed to retain the previously existing provider-based requirements pertaining to ownership, control and administration, for remote/off-campus facilities.

**Removal of Prohibition on Joint Ventures**

In the current regulations, CMS specifically prohibits hospitals from entering into joint ventures for the ownership of its provider-based departments and units. However, under the proposed regulations, this limitation only applies to off-campus departments and units. Given the presumption of integration that CMS

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is now recognizing for on-campus entities, CMS has proposed to allow hospitals to joint venture their on-campus facilities while maintaining the facilities’ provider-based status.

**Removal of Restrictions on Management Contracts**

Consistent with the reasoning behind reducing certain provider-based requirements for on-campus facilities, CMS has also removed the management staff requirement for on-campus facilities operated under a management services contract.

Currently, a management service company may only employ management staff. All non-management staff must be employed by the main provider or by another organization that also employs the staff of the main provider. The proposed regulation removes this restriction for on-campus facilities. Accordingly, management companies may directly employ and provide management, non-management and clinical staff at on-campus provider-based facilities.

As for off-campus facilities, the requirements have been revised to provide that the all personnel providing direct patient care services must be employed by the main provider. All other personnel working at the off-campus provider-based facility may be employed by the management company or a third party.

**Addition of Facility Types Excepted from Provider-Based Determinations**

The proposed regulations clarify and expand upon the types of facilities, organizations and units that are exempt from the provider-based requirements. Specifically, the new exempt categories include independent diagnostic testing facilities that only furnish services subject to fee schedule reimbursement (e.g., mammography and clinical laboratory services).

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For questions or assistance, please contact the Paul Hastings attorney with whom you work to discuss this matter, or: Kenneth Yood at (213) 683-6110, or via email at kennethyood@paulhastings.com; Tae Lee at (213) 683-6322, or via email at taelee@paulhastings.com; or Lauren Reisman at (213) 683-6259, or via email at laurenreisman@paulhastings.com.