American Hospital Association

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Donald M. Berwick, M.D., M.P.P., F.R.C.P.
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

Re: CMS-3227-P, Medicare and Medicaid Programs: Proposed Changes Affecting Hospital and Critical Access Hospital (CAH) Conditions of Participation (CoPs): Credentialing and Privileging of Telemedicine Physicians and Practitioners.

Dear Dr. Berwick:

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our 40,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the proposed changes to the Medicare Conditions of Participation (CoPs) for the credentialing and privileging of telemedicine physicians and practitioners. We generally believe that the proposed changes will allow access to telemedicine services to continue in a manner that is safe and beneficial for patients, while minimizing any unnecessary regulatory burden to providers.

The current Medicare CoPs require the governing body of a hospital to make all privileging decisions based on the recommendation of the hospital's medical staff after the medical staff has thoroughly reviewed the credentials of practitioners applying for privileges. Similarly, each critical access hospital (CAH) is required to have its privileging decisions made by its governing body or the individual responsible for the CAH. This requirement is applied regardless of whether the services are to be provided onsite at the hospital or through a telecommunications system. In contrast to the stringent nature of these CoPs, The Joint Commission previously allowed for "privileging by proxy," whereby hospitals receiving telemedicine services could rely on the privileging decisions of the hospitals and ambulatory care organizations providing the telemedicine services. As a result of the change enacted in the *Medicare Improvements for Patients and Providers Act of 2008* that terminated the statutory recognition of The Joint Commission's hospital accreditation program, The Joint Commission was required to more closely align its standards with the Medicare CoPs, including revising the telemedicine privileging standard.

Joint Commission-accredited hospitals had grave concerns about this required change, as it was both duplicative and burdensome. Joint Commission-accredited hospitals are now required to review the credentials of and make privileging decisions for practitioners who already underwent such reviews in their home organizations. Because large hospitals and academic medical centers may make many specialists available to smaller hospitals for telemedicine services, the privileging process could be considerably onerous. This is particularly problematic for small hospitals – the recipients of the greatest amount of telemedicine services – that may have inadequate resources to carry out the credentialing and privileging process and may lack the expertise within their in-house medical staff to conduct the reviews. In summary, the necessity for every hospital to follow the credentialing and privileging process outlined in the CoPs has threatened hospitals' ability to provide and receive telemedicine services, to the detriment of patient care.

CMS proposes revising the credentialing and privileging requirements around the provision of telemedicine services. The proposed change would allow the hospital receiving the telemedicine services to rely upon credentialing and privileging information from the hospital providing the telemedicine services as long as certain conditions are met, including that:

1) the hospital providing the telemedicine services is a Medicare-participating hospital;
2) the practitioner providing the telemedicine services is privileged at the hospital providing the telemedicine services;
3) the practitioner is licensed to practice in the state in which the receiving hospital is located; and
4) the hospital receiving the telemedicine services has evidence of an internal review of the practitioner's performance, including, at a minimum, information on adverse events and complaints.

In addition, the proposed CoPs would require the governing body of the hospital receiving the telemedicine services to ensure that the governing body of the hospital providing the services meets the existing medical staff CoPs provisions. Similar changes are proposed for the CAH CoPs.

The AHA appreciates CMS' attention to this issue. **We generally support the proposed changes to the credentialing and privileging requirements for telemedicine services and believe these changes will allow hospitals to provide and receive telemedicine services that are vital in many communities to ensuring patients' access to services.** The proposed regulations will both allow for the provision of telemedicine services in a safe and timely manner and minimize the regulatory burden for hospitals. **However, we believe the proposed changes do not go far enough.** The proposed requirements would govern only those telemedicine services provided by practitioners privileged at another Medicare-participating hospital. Some hospitals contract with physician groups or other entities for the provision of some telemedicine services, namely for radiology

interpretation services. The proposed CoPs do not address how hospitals might more easily credential and privilege these practitioners in a way that ensures the safe provision of telemedicine services. Under the prior Joint Commission standards, hospitals were permitted to use the credentialing and privileging information from such groups as long as the entity was accredited by The Joint Commission through its ambulatory care accreditation program. We urge CMS to develop a similar process whereby hospitals can use the credentialing and privileging information from practitioners who fulfill the Medicare Conditions of Coverage. We look forward to working with CMS to develop an acceptable process for such situations.

Thank you for the opportunity to comment on this proposed rule. If you have any questions, please feel free to contact me or Nancy Foster, vice president of quality and patient safety policy, at (202) 626-2337 or nfoster@aha.org.

Sincerely,

Rick Pollack
Executive Vice President