

Hall, Render, Killian, Heath & Lyman is a full service health law firm with offices in Indiana, Kentucky, Michigan and Wisconsin. Since the firm was founded by William S. Hall in 1967, Hall Render has focused its practice primarily in the area of health law and is now recognized as one of the nation's preeminent health law firms serving clients in multiple states. For more information about the firm please visit us at www.hallrender.com.

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CMS Issues New Never Event National Coverage Determinations

On January 15, 2009, the Centers for Medicare & Medicaid Services (CMS) announced three (3) national coverage determinations (NCDs) pertaining to so-called "Never Events" identified by the National Quality Forum (NQF) for which Medicare will no longer pay. More specifically, CMS specified the following Serious Reportable Events will not be covered:

1. Wrong surgical or other invasive procedures performed on a patient;
2. Surgical or other invasive procedures performed on the wrong body part; and,
3. Surgical or other invasive procedures performed on the wrong patient.

It is CMS's intent with these NCDs to reduce or eliminate the occurrences of preventable surgical errors and the associated Medicare payments. CMS believes these policies have the potential to reduce causes of serious illness and deaths to beneficiaries and the unnecessary Medicare costs.

The decision to no longer reimburse Medicare providers for the aforementioned Never Events is closely tied to the final rule adopted for FY 2008 pertaining to the provisions of Hospital-Acquired Conditions (HACs) as a part of the Inpatient Prospective Payment System. Essentially, the rule states that Medicare will not reimburse a hospital for a patient's extended stay that is due to an illness or a condition acquired after admission to the hospital.

After considering the 28 Never Events on the NQF's list, CMS determined that not all Never Events fell under the HACs payment provision. Consequently, the NCDs were determined to be the appropriate means to address the coverage issue. Unlike the HACs payment provision which affects only payments to hospitals for inpatient stays, the NCDs affect payments to hospitals, physicians, and other health care providers and suppliers involved in erroneous surgeries.

These three (3) NCDs are effective immediately with implementation instructions to be provided at a later date.

If you would like additional information on these three national coverage determinations, please contact Todd J. Selby at (317) 977-1440 or tsselby@hallrender.com or Brian D. Jent at (317) 977-1402 or bjent@hallrender.com,