

CMS APPROVES FIRST PHYSICIAN-OWNED HOSPITAL EXPANSION REQUEST

On October 31, 2014, the Centers for Medicare & Medicaid Services ("CMS") issued a final notice approving Lake Pointe Medical Center's ("Lake Pointe") request for an exception to the Affordable Care Act's ("ACA's") expansion limitations imposed on physician-owned hospitals.

BACKGROUND

Under the ACA's amendments to the Stark Law, a physician-owned hospital cannot expand the aggregate number of operating rooms, procedure rooms or licensed beds beyond the number for which the hospital was licensed on March 23, 2010. The Secretary of Health and Human Services may grant an exception to this limitation for physician-owned hospitals that qualify as an "applicable hospital" or a "high Medicaid facility." In May 2014, CMS published notice in the Federal Register that Lake Pointe had requested a high Medicaid facility expansion exception. CMS solicited comments from individuals and entities in the community where Lake Pointe is located. One comment was submitted opposing Lake Pointe's expansion on the basis that Lake Pointe, according to recently released data, no longer qualified as a high Medicaid facility.

APPROVAL OF THE REQUEST

In its final notice approving the request, CMS noted that the regulations did not permit it to consider the FY 2012 data as suggested by the commenter. CMS approved the exception based on the following criteria:

1. Lake Pointe is not the sole hospital in Rockwall, Texas, the county in which it is located;
2. Lake Pointe certified that it does not discriminate against beneficiaries of federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries; and
3. With respect to each of the three most recent fiscal years *for which data were available as of the date the hospital submitted its request*, the hospital has an annual percentage of total Medicaid inpatient admissions that is estimated to be greater than such percentages for any other hospital located in the same county as Lake Pointe.

CMS's approval of the expansion request allows Lake Pointe to add an additional 36 beds to the facility on the hospital's main campus. Notably, during the three most recent years for which data was available at the time Lake Pointe's application was filed, Lake Pointe was the highest Medicaid facility in its county by only a very small margin. In its approval, CMS appears to have followed the regulatory requirements without taking into account the additional facts and circumstances of this particular request. CMS also offered little insight or analysis regarding CMS's decision-making process related to the expansion request. The statute and regulations specific to requesting an expansion exception for a physician-owned hospital appear to give CMS discretion in opting to grant expansion requests to hospitals meeting the criteria to be defined as a "high Medicaid facility" or "applicable hospital." In other words, a determination that a hospital meets the criteria does not necessarily mean that CMS must grant the exception. For example, it is possible CMS could have used its discretion to deny Lake Pointe's request based on the fact that Lake Pointe met the criteria by a very slim margin and, in fact, would not continue to meet the criteria in the future. However, based on the Lake Pointe ruling, it appears that CMS chose to make its decision based on the requirements of the statute and regulations alone.

If CMS finalizes its proposed regulations amending the process for expansion exception requests by allowing hospitals to use additional data sources to prove that the hospital meets the applicable criteria, it is likely that such analysis would become significantly more complicated. For example, in such a case, there may be cases where a hospital both arguably meets the criteria and does not meet the criteria at the same time. Such a change to the regulations would most likely result in CMS being forced to exercise discretion in determining whether expansion requests should be granted. Lake Pointe was the first physician-owned hospital to receive an expansion exception from CMS since the ACA imposed the expansion limitation.

If you have any questions or would like additional information about the physician-owned hospital expansion request process, please contact:

- Andrea Impicchie at (317) 977-1578 or andreai@hallrender.com;

- Alyssa James at (317) 429-3640 or ajames@hallrender.com; or
- Your regular Hall Render attorney.

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