

September 4, 2007

## CMS FINAL DISCLOSURE RULES ON PHYSICIAN OWNERSHIP & PHYSICIAN COVERAGE OF HOSPITALS

The Centers for Medicare & Medicaid Services (“CMS”) released final rules on disclosure requirements for physician-owned hospitals and the extent of physician presence in hospitals. 42 Fed Reg. 47130 (Aug. 22, 2007). The final rules did not adopt a provision in the proposed rules which would have required physician ownership disclosure requirements to be included in medical staff bylaws. The final rules implement an exception to the physician ownership disclosure requirements for investment in publicly-traded securities and mutual funds that mirrors the physician ownership exceptions under the Stark regulations at 42 C.F.R. § 411.356 (a) &(b). The rules addressed by this Client Alert include 42 C.F.R § 489.3, .12, .20, and .53.

### PHYSICIAN DISCLOSURE OF HOSPITAL OWNERSHIP

New CMS rules require any physician-owned hospital to provide a written notice to patients disclosing its ownership by physicians and, on patient request, provide a list of all physician investors. Physician-owned hospitals include any hospital with a CMS provider agreement in which physicians have ownership or other investment interests. Exceptions exist for some physician investment interests in publicly-traded securities and mutual funds. The final rules also require greater disclosure of physician ownership in applying for hospital provider agreements with Medicare.

The rule requires notice to be provided at the beginning of a patient’s hospital stay. A patient’s hospital stay begins at the time any preadmission information is provided or preadmission testing is performed. Hospitals that do not have procedures in place to disclose physician ownership interests risk in denial or termination of their provider agreements.

The provisions of this CMS final rule are effective on October 1, 2007. To access our previous Client Alert on Federal and Texas Requirements on Physician Ownership follow the attached link: [4/27/2007 - HEALTH CARE ALERT: Federal and Texas Requirements for Disclosure of Physician Ownership](#) . Please note that Texas has physician-ownership disclosure requirements that apply to both hospitals and physicians, and disclosure requirements for ownership and compensation arrangements for physicians who refer workers’ compensation (“WC”) patients or who desire to participate on the WC Approved Doctor List.

### DISCLOSURE REQUIRED IF PHYSICIANS ARE NOT PRESENT IN A HOSPITAL

New CMS rules require all hospitals to provide written notice to patients at the beginning of outpatient visits and inpatient stays if the hospital does not have a physician present 24 hours a day, seven days a week. All hospitals that do not have 24/7 on-site physician coverage must disclose how the hospital will meet the needs of any patient who develops an emergency medical condition when no physician is present in the hospital. The rule requires notice to be provided at the beginning of a patient’s hospital stay. A patient’s hospital stay begins at the time any preadmission information is provided or preadmission testing is performed. Commentary in the

final rule indicates that Medicare standards apply equally to all provider-based locations of a hospital. To the extent multiple locations operate under one provider number, it is necessary to disclose all locations that do not have 24/7 physician presence.

The provisions of this CMS final rule are effective on October 1, 2007. Texas hospital licensing regulations require that general hospitals (except for CMS-designated critical access hospitals) located in counties with a population of 100,000 or more shall have a physician qualified to provide emergency medical care on duty in the emergency treatment area at all times. Special hospitals, CMS-designated critical access hospitals, and general hospitals located in counties with a population of less than 100,000 shall have a physician on-call and able to respond in person, or by radio or telephone within thirty minutes.

If you would like assistance implementing the disclosure requirements or more information regarding these rules, please contact one of the Haynes and Boone Health Care Practice Group attorneys listed below.

Stephen P. Allison  
(210) 978-7416

[stephen.allison@haynesboone.com](mailto:stephen.allison@haynesboone.com)

Stacy L. Brainin  
(214) 651-5584

[stacy.brainin@haynesboone.com](mailto:stacy.brainin@haynesboone.com)

Felicity A. Fowler  
(713) 547-2072

[felicity.fowler@haynesboone.com](mailto:felicity.fowler@haynesboone.com)

Earl Harcrow  
(817) 347-6646

[earl.harcrow@haynesboone.com](mailto:earl.harcrow@haynesboone.com)

David N. Heard  
(214) 651-5563

[david.heard@haynesboone.com](mailto:david.heard@haynesboone.com)

Michael L. Hood  
(214) 651-5673

[michael.hood@haynesboone.com](mailto:michael.hood@haynesboone.com)

Jeffrey P. King  
(512) 867-8413

[jeff.king@haynesboone.com](mailto:jeff.king@haynesboone.com)

Lewis A. Lefko  
(214) 651-5608

[lew.lefko@haynesboone.com](mailto:lew.lefko@haynesboone.com)

Thomas W. Mayo  
(214) 651-5768

[thomas.mayo@haynesboone.com](mailto:thomas.mayo@haynesboone.com)

Michael McCabe  
(214) 651-5126

[michael.mccabe@haynesboone.com](mailto:michael.mccabe@haynesboone.com)

Bill Morrison  
(214) 651-5018

[bill.morrison@haynesboone.com](mailto:bill.morrison@haynesboone.com)

If you receive this Health Care Alert by mail and would prefer to receive it electronically, please e-mail Lewis Lefko at [lew.lefko@haynesboone.com](mailto:lew.lefko@haynesboone.com). Please visit our website at [www.haynesboone.com](http://www.haynesboone.com) for other recent Health Care Alerts.