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CMS' Do-Not-Pay List Continues to Grow

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In this Issue

PRRB Issues New Rules, Effective August 21, 2008

CMS' Do-Not-Pay List Continues to Grow

CMS Adds Thirteen New Quality Measures for Reporting in the Hospital Quality Data Program

Kyphon, Inc. Settles Fraud Allegations; Hospitals Next in the Government's Sights?

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Last year we informed you of CMS' selection of eight "hospital acquired conditions" (HACs) for which Medicare would no longer reimburse hospitals the higher costs of treatment, effective October 1, 2008. [See **"To Err is Human...But It Won't Get Paid: Denial of Medicare Payment for Hospital-acquired Conditions,"** *Payment Matters*, 9/27/07] In the proposed FY 2009 IPPS rule, CMS proposed to add an additional ten HACs to this "do not pay" list. However, in the final FY 2009 IPPS rule, published in the August 19, 2008 *Federal Register*, CMS only finalized the following four HACs:

- certain issues related to poor control of blood sugar levels, such as diabetic ketoacidosis and hypoglycemic comas;
- surgical site infections that develop after certain orthopedic procedures;
- surgical site infections that develop after bariatric surgery for obesity; and
- deep vein thrombosis (blood clots in the extremities)/pulmonary embolism (the migration of a blood clot into the lung) following certain orthopedic surgeries such as knee and hip replacements.

This revised list of HACs becomes effective on October 1, 2008, and payment will no longer be made for all twelve HACs.

Eight of the current HACs are included on the National Quality Forum's list of "Serious Reportable Adverse Events" or "never events." Not included on CMS' HAC list are never events related to wrong surgeries. However, CMS has recently decided to use its national coverage determination (NCD) process to address payment for these surgical events. Specifically, CMS has decided to generate NCDs for: the wrong surgery performed on a patient; surgery performed on the wrong patient; and surgery performed on the wrong body part. [See **"Medicare and Medicaid Move Aggressively to Encourage Greater Patient Safety in Hospitals and Reduce Never Events,"** CMS web site] **Comments on this decision are due August 30, 2008.**

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Finally, on July 31, 2008, CMS issued a letter to all State Medicaid Directors summarizing Medicare's HAC payment policies as well as its application of the NCD process to certain "never events." [See [CMS web site](#)] CMS encouraged State Medicaid programs to implement similar policies in order to avoid the fiscal consequences resulting from "[a] provider's improper patient care."

Ober|Kaler's Comments: The list of HACs finalized in the final FY 2009 IPPS rule is much smaller than the list in the proposed FY 2009 IPPS rule. While this may provide some relief for hospital providers, CMS did state that it will yet again seek comments on additional HAC candidates in the FY 2010 IPPS proposed rule. In addition, providers with higher Medicaid populations should also pay attention to the implementation of similar policies by their State Medicaid programs.

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