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CLIENT ADVISORY

October 30, 2014

CMS Issues Additional Guidance on the Implementation of New LTCH Moratoria

On October 10, 2014, the Centers for Medicare and Medicaid Services (“CMS”) issued additional guidance (S&C: 15-03 Hospitals) on the long-term care hospital (“LTCH”) moratoria that became effective on April 1, 2014. Pursuant to statutory mandates set forth in the Pathways to SGR Reform Act of 2013 (Pub. L. 113-67), enacted December 26, 2013, and the Protecting Access Medicare Act of 2014 (Pub. L. 113-93), enacted April 1, 2014, CMS promulgated new regulations placing moratoria on the establishment of new LTCHs and LTCH satellites as well as bed increases to such facilities.

This is not the first time that CMS has placed moratoria on LTCH development projects. Prior moratoria were in effect from December 29, 2007 through December 28, 2012. A key difference between the “expired” moratoria and the “new” moratoria is found in the moratoria exceptions. The “expired” moratoria barred (1) the establishment of new LTCHs/LTCH satellite facilities and (2) increases in the number of beds in existing LTCHs/LTCH satellite facilities. There were exceptions to both expired moratoria. The “new” moratoria also bar (1) the establishment of new LTCHs/LTCH satellites and (2) bed increases in existing LTCHs/LTCH satellites. However, the “new” moratoria only provide exceptions to the moratorium on the establishment of new LTCHs and LTCH satellite facilities. There are no exceptions to the moratorium placed on bed increases in existing LTCHs or LTCH satellite facilities. CMS emphasizes and explains the practical implications of this distinction in the October 10, 2014 Survey & Certification Memorandum (“S&C Memo”).

Before pursuing new LTCH development projects, healthcare providers should read the October 10, 2014 S&C Memo closely. Also, the S&C Memo explains that any entity that believes that it qualifies for an exception to the new LTCH/LTCH satellite moratorium may seek an advance preliminary determination from CMS if the project qualifies for an exception before the entity submits a CMS 855A application to enroll the new LTCH or satellite in the Medicare program. Providers may wish to take advantage of this process.

If you have questions regarding the new LTCH moratoria, please contact Emily Towey, Colin McCarthy, or Tommy Miller at (866) 967-9604, or by email at etowey@hdjn.com, cmccarthy@hdjn.com, or tmiller@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

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