HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

COMPLIANCE ALERT 10-19

Physician Direct Supervision Update for CAHs from CMS March 9, 2010 Open Forum Rural Health Conference Call

The "Question and Answer" period on the March 9, 2010 Open Forum Conference call on Rural Health for CMS officials focused primarily on the new 2010 OPPS "Direct Supervision" Rule interpretation for Critical Access Hospitals. (Refer to *Compliance Alert 10-6* for information an explanation of the rule.) Basically, the new clarification for 2010 reiterates the need for physicians or non-physician providers to be present, immediately available, and interruptible for outpatient therapeutic services.

Use of Emergency Room Providers: Several callers, including the HHSC CCPO, asked questions and for interpretations on whether emergency room physicians could provide the required direct supervision in critical access hospitals for the outpatient services (such as observation bed admissions). The bottom line: Emergency Room Physicians (and other non-physician providers such as nurse practitioners) ***MAY*** provide the direct supervision required if:

- The emergency room provider is on the hospital's premise and immediately available. The provider can not be 30 minutes away.
- The doctor's State scope of practice includes the required clinical services.
- The physician is appropriately credentialed by the Hospital for the services required.
- The Hospital has determined and documented that the emergency room patient load allows for the ED physician to provide the direct supervision of other outpatient services without detriment to the emergent care required in the emergency room. Hospitals must assess how busy the emergency room is to ensure that appropriate physician coverage is available. Documentation requirements were not stated but CMS "assumes that the appropriate documentation has always been present in the hospitals". For instance, CMS stated that coverage by a qualified emergency room physician would be fine until another on-call physician

was called in and arrived if the emergency room or its provider got busy all of sudden.

- The physician is interruptible so the physician and "step in" and provide services if necessary.

CMS has received significant "push-back" from rural hospitals on this new interpretation but reiterated that the guidance issued will remain in effect for 2010 although more guidance is forthcoming. CMS Officials stated that the direct supervision rule has always applied to CAHs. Many participants in today's call argued that the still "gray" area of this rule made it challenging but CMS reiterated that much of the black/white situations were more a matter of "nuance" and interpretation by the Hospitals.

RAC Process. Several callers were concerned that the CMS guidance on direct supervision was still somewhat vague and therefore how would the RAC process be affected if the RAC auditors disagreed with the Hospital's application of the direct supervision rule. CMS stated that the RAC process currently has not approved looking at the direct supervision issue and that any inclusion of this issue would have to be approved by CMS before the RAC contractors could review this at facilities.

Source: CMS Open Forum Conference Call, Rural Health, March 9, 2010. Led by Dr. Chris Ritter, Acting Director of Outpatient Services, CMS.