

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-25

DATE: February 13, 2009
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group
SUBJECT: Enforcement of Amended Requirements for Certain Hospital and Critical Access Hospital (CAH) Disclosures to Patients

Memorandum Summary

- **Revision to Physician-owned Hospital Disclosure Requirements.** 42 CFR 489.3 and §489.20(t) and (v) were amended, effective October 1, 2008, to:
 - Expand the definition of "physician-owned hospital" to include a participating hospital in which a physician or immediate family member of a physician has an ownership interest in the hospital.
 - Require hospitals/CAHs to provide a list of physician owners at the time a patient requests it.
 - Require hospitals/CAHs to make disclosure at the time of referral a condition of medical staff membership for referring physician owners; and
 - Exempt from the disclosure requirements hospitals whose physician owners do not refer patients.
- **Clarification of Termination Basis.** 42 CFR 489.53 was also amended as of October 1, 2008, to clarify that the Centers for Medicare & Medicaid Services (CMS) may terminate the provider agreement of hospitals or CAHs that fail to make required disclosures, including disclosures when a hospital does not have a physician on site 24/7.

On December 14, 2007, we issued S&C-08-07, which discussed enforcement of the requirement for certain hospital and Critical Access Hospital (CAH) disclosures to patients. The final rule governing the hospital inpatient prospective payment system, published on August 19, 2008 and effective October 1, 2008, amended these Medicare provider agreement requirements. (73 FR 48434, 48757) Under the final rule:

- 42 CFR 489.3 was amended to include in the definition of a "physician-owned hospital" (which includes CAHs for this purpose) an owner who is *an immediate family member of a physician* (as defined in 42 CFR 411.351).