

HOSPITALS FACE NEW LEGAL OBLIGATIONS IN THE FIRST QUARTER OF 2011

With the new year comes a number of new legal and operational considerations for hospitals. As noted below, we have addressed many of these matters in previous alerts. Nevertheless, given the large number of tasks to consider, we thought a reminder would be helpful.

The following are some of the newest and most significant tasks that hospitals should be completing in relation to these new considerations¹:

1. **Medical Staff Bylaws.** Ensure that Medical Staff Bylaws are compliant with new Joint Commission standard MS 01.01.01 that becomes effective March 31, 2011. In conjunction with this review, hospitals may also consider taking advantage of the newly passed New York regulation that allows for a reduced “look back” requirement during credentialing and re-credentialing. For more information, see <http://www.garfunkelwild.com/ClientAlerts/ChangesHospitalCode.htm>
2. **HIPAA Breach Notification.** Prior to March 1, 2011, submit annual report to the Department of Health and Human Services regarding breaches of unsecured PHI involving less than 500 individuals. The following link leads to the reporting form: <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brinstruction.html>
3. **Electronic Health Record (“EHR”) Registration.** For hospitals and providers that are eligible for Medicare EHR incentive programs, register at <https://ehrincentives.cms.gov/hitech/login.action> in order to receive incentive payments for implementation of EHRs that meet Federal requirements.
4. **5010 Transaction Standards.** Prepare for implementation Version 5010 and Version D.0 transaction standards in billing processes. These are scheduled to go into effect January 2012 and will require significant changes to provider’s billing software and business practices. For more information, see: https://www.cms.gov/transactioncodesetsstands/02_transactionsandcodesetsregulations.asp.
5. **Visitation Policies.** Prepare, or ensure the existence of, visitation policies to comply with new CMS hospital conditions of participation that went into effect January 18, 2011. These policies must require, among other things, that patients are informed of their rights to receive approved visitors and any clinical restrictions on such rights.

¹ This Legal Alert is intended as a non-exhaustive list of some of the newest and most significant obligations that hospitals face in the first quarter of 2011. There are other long-standing or new obligations which hospitals should continue to fulfill in accordance with their routine procedures. This Legal Alert is not a comprehensive list of such obligations.

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6. **CMS Timely Claims Filing Requirement.** Implement policies to ensure timely filing of Medicare claims. Under the new CMS requirements, Medicare claims must be filed within one year from the date of service. For more information, see <http://www.garfunkelwild.com/ClientAlerts/HCR5-NY.pdf>.
7. **HIV Tests.** Ensure that eligible patients between the ages of 13 and 64 are being offered HIV tests. As of September 2010, New York state regulations require hospital emergency rooms and primary care physicians to offer HIV tests to all patients between the ages of 13 and 64. For more information, see: <http://www.garfunkelwild.com/ClientAlerts/HIV.htm>.
8. **Mandatory Repayment of Medicaid Overpayments within 60 Days.** Ensure that identified overpayments from Medicare AND Medicaid are being returned within 60 days. Since March 23, 2010, Federal law has required that a provider who has identified an overpayment that it received from certain federal health care programs report and return such overpayment within 60 days of the overpayment being identified or the date any corresponding cost report is due (if applicable). Enforcement of these requirements for New York Medicaid had been delayed until January 1, 2011. For more information, see <http://www.garfunkelwild.com/ClientAlertsHCR3-NY.pdf>.

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If you have any questions about any of these obligations, please contact the GW attorney with whom you regularly consult.

About Garfunkel Wild, P.C.

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