



May 26, 2004

Dear Hospital Administrator:

The purpose of this letter is to inform you that Congress recently enacted legislation at section 947 of the Medicare Modernization Act (MMA) that requires all Medicare participating hospitals, as part of their Medicare provider agreement, to comply with the Occupational Safety and Health Administration's (OSHA) Bloodborne Pathogens (BBP) standards at 29 CFR 1910.1030. The BBP standards can be found on OSHA's website at <http://www.osha.gov/SLTC/bloodbornepathogens/>.

In response, the Centers for Medicare and Medicaid Services (CMS) proposed this requirement in a Notice of Proposed Rulemaking, CMS-1428-P, in the Federal Register, which can be found at <http://www.cms.hhs.gov/providers/hipps/frnotices.asp>. The BBP provision can be found in Part 6 at pp. 28811-28812. This rule will implement section 947 of the MMA and will require hospitals to provide proper protection from BBPs to all employees who may come in contact with human blood or other potentially infectious materials in the course of their duties.

A hospital's Medicare provider agreement will not be terminated if the hospital is found in violation of the BBP standards. However, failure to comply with the BBP standards could result in civil money penalties being imposed and collected.

Most hospitals are already subject either to the OSHA BBP standards or to other BBP standards (generally, State standards) that meet or are equal to the OSHA standards. However, there are some non-Federal, government-owned hospitals located in states with OSHA offices that have neither their own BBP standards nor obligation to meet the OSHA BBP standards. In fact, twenty-six states, plus the District of Columbia, the Virgin Islands, and Guam, do not have their own BBP standards. Therefore, employees of non-Federal, government-owned hospitals located in those 26 states, the District of Columbia, the Virgin Islands, and Guam are not afforded the same protections from BBP as employees of all other hospitals in the U.S. Congress enacted the legislation to close the gap to ensure that all hospitals' employees are afforded the same protections under the BBP standards.

According to the American Hospital Association's 2003 data, the 26 states that do not have their own BBP standards that will be affected by this regulatory change are as follows: Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, West Virginia, Wisconsin, District of Columbia, and Guam. Therefore, non-Federal, government-owned hospitals in these states, the District of Columbia, the Virgin Islands, and Guam must now comply with the OSHA BBP standards as the result of this statutory provision.

Page 2

In conclusion, the amendment to section 1861(ee) of the Social Security Act (the Act) will be incorporated into the current regulations in the Medicare Provider Agreement requirements at 42 CFR 489.20(t) which will be effective July 1, 2004. Questions regarding this regulation may be directed to Monique Howard (410) 786-3869.

Sincerely,

/s/

Rachael B. Weinstein
Director
Clinical Standards Group
Office of Clinical Standards and Quality

cc: Associate Regional Administrators
for Medicare Regions I-X
Director, State Survey Agencies