KROKIDAS & BLUESTEIN
ATTORNEYS

CLIENT ALERT

UPDATE ON CONSOLIDATED MEDICAL STAFF CREDENTIALING

The Centers for Medicare & Medicaid Services ("CMS") surprised many health care providers in enacting its final rule on consolidating medical staffs (the "Final Rule"). The Final Rule, entitled "Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; Part II," was published on May 12, 2014 and reversed CMS's prior position on consolidated medical staffs. Previously, CMS required each hospital to possess an independent medical staff, even if multiple hospitals functioned as part of the same health care system. In the Final Rule, however, CMS recognized the benefits of medical staff consolidations, and permitted hospitals and health systems to share credentialing, privileging, and other standards and practices so long as the consolidating medical staffs followed certain procedures and safeguards.

Although the Final Rule should ordinarily be seen as a boon for hospitals and health systems looking to streamline their medical staff credentialing activities, it is important that providers remain aware of Massachusetts' limitations on medical staff consolidation. First, Massachusetts peer review statutes define a "medical peer review committee" in part as a committee comprised of members of a (single) hospital's medical staff. Second, The Massachusetts Patient Care Assessment Program Regulations (243 CMR 3.00) ("PCA Regulations"), as interpreted by the Board of Registration in Medicine ("BORIM"), are directed to individually-licensed facilities and continue to prevent consolidated medical staff decisions.

A letter issued by BORIM in 1992 suggests that Massachusetts hospitals and health systems in Massachusetts still have some ability to streamline their medical staff credentialing. In its November 25, 1992 letter (the "Letter"), BORIM indicated that a health care facility can utilize an independent consultant or entity which serves as an agent of the health care facility for the purposes of collecting credentialing documents. This would allow hospitals and health systems to streamline the credentialing process by creating a uniform medical staff application and delegating the task of gathering documents, records and references for each applicant to a credentials verification organization [i] (CVO) for the hospitals or health systems. The Letter states that the confidentiality protections afforded to the credentialing information under Massachusetts peer review statutes and the PCA Regulations remain in place under this type of arrangement. The Letter emphasizes that a health care facility cannot delegate the review and

assessment of such documents to an agent and that the health care facility is responsible for making decisions whether to hire, retain, or grant new or renewed clinical privileges or staff membership to physicians. When we contacted BORIM about the Final Rule, BORIM confirmed that the Letter still represents BORIM's interpretation of the PCA Regulations.

Although the Letter provides some flexibility to Massachusetts hospitals and health systems in credentialing, unless and until the Commonwealth institutes changes consistent with the recent CMS developments, providers need to take care so as not to run afoul of state law in streamlining their medical staff credentialing and privileging processes.

If you have questions about medical staff consolidation or would like general assistance in streamlining medical staff processes, please contact a member of our health care team – Attorneys Anthony Cichello (ajc@kb-law.com), Jennifer Gallop (jgallop@kb-law.com), Robert Griffin (rgriffin@kb-law.com), Emily Kretchmer (ekretchmer@kb-law.com), Anjali Waikar (awaikar@kb-law.com), or Braden Miller (bmiller@kb-law.com).

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[i] "Any organization that is engaged in credentialing activities and functions and meets the standards set forth by the organization seeking to delegate can be a delegated organization." See, The Credentialing Handbook, Aspen Publishers, Inc. at 466 (1999).