

Legal News Alert is part of our ongoing commitment to providing up-to-the minute information about pressing concerns or industry issues affecting our health care clients and colleagues.

If you have any questions about this alert or would like to discuss this topic further, please contact your Foley attorney or any of the following individuals:

**Janice A. Anderson**

Chicago, Illinois  
312.832.4530  
janderson@foley.com

**Katherine S. O'Brien**

Chicago, Illinois  
312.832.4903  
kobrien@foley.com

**Robert D. Sevell**

Century City, California  
310.975.7784  
rsevell@foley.com

**Cheryl L. Wagonhurst**

Los Angeles, California  
213.972.4681  
cwagonhurst@foley.com

**Judith A. Waltz**

San Francisco, California  
415.438.6412  
jwaltz@foley.com

## Federal Government Continues to Focus on Quality of Care in the Health Care Industry

Underscoring its continuing commitment to improve the quality of health care provided to Medicare beneficiaries, on January 22, 2008, the Centers for Medicare and Medicaid (CMS) released the 9th Statement of Work (SOW) for Medicare's Quality Improvement Organizations (QIO). The expectations delineated by CMS for its QIO contractors provide significant guidance to providers focusing on their quality improvement efforts. Certain hospitals and nursing homes actually are identified by name for targeted QIO attention under the 9th SOW. The 9th SOW also highlights the need for providers to be proactive in assessing and addressing quality of care issues.

### CMS's 9th Statement of Work — Medicare's QIOs

As explained on the CMS Web site, the QIO Program comprises a national network of 53 QIOs, responsible for each U.S. state and territory and the District of Columbia. QIOs work with consumers, physicians, hospitals, and other caregivers to refine care delivery systems to ensure patients — particularly those from underserved populations — receive the right care at the right time. The QIO Program also safeguards the integrity of the Medicare Trust Fund by ensuring that payment is made only for medically necessary services as well as investigating beneficiary complaints about quality of care.

Intended to cover the contract cycle running from August 2008 until July 2011, the 9th SOW focuses not only on statutory mandated quality of care review activities but also promulgates proactive initiatives to help providers prevent illness, decrease harm to patients, and reduce waste in healthcare. During the next three years, QIOs will be responsible for meeting performance targets as well as partnering with Medicare and related Medicare organizations, including The Department of Health and Human Services (HHS) Office of Inspector General (OIG), to promote the four "themes" of the 9th SOW: beneficiary protection, patient pathways, patient safety, and prevention.

## Beneficiary Protection

During the next three years, QIOs will be responsible for beneficiary-protection activities emphasizing statutory and regulatory mandated review activities and quality improvement. The 9<sup>th</sup> SOW's beneficiary-protection requirements include enhanced collaboration between QIOs, fiscal intermediaries (FIs), carriers, state survey agencies (SSAs), OIG, and others. Under the 9<sup>th</sup> SOW, when a QIO identifies a case or cases that meet criteria for a "gross and flagrant" violation of a statutory obligations, the QIO is instructed to report the offenses to OIG. These include:

- Failing to provide medically necessary services or items
- Failing to provide services and items economically
- Failing to provide items and services of a quality that meets professionally recognized standards of healthcare

Additionally, the 9<sup>th</sup> SOW instructs QIOs to collaborate with OIG and CMS contractors, including recovery audit contractors (RACs) and FIs, in the ongoing effort to protect Medicare beneficiaries.

## Patient Pathways

The 9<sup>th</sup> SOW's "patient pathways" theme requires QIOs to focus on improving coordination across the continuum of care; promoting seamless transitions from the hospital to home, home health care, or skilled nursing care; and improving the quality of care for Medicare beneficiaries who transition between care settings. The QIOs will work with health systems to:

- Decrease the rate of unnecessary hospitalizations
- Reduce readmissions following hospitalizations
- Achieve high-value health care

As with the other focus areas of the 9<sup>th</sup> SOW, the primary purpose of this initiative is to improve care for beneficiaries through increased intervention in addition to the data-gathering and monitoring functions that guided QIOs' work under the 8<sup>th</sup> SOW.

## Patient Safety

In the area of patient safety, the 9<sup>th</sup> SOW focuses on six areas:

- Improving inpatient surgical safety
- Reducing rates of nosocomial Methicillin-resistant Staphylococcus Aureus infections
- Improving drug safety
- Reducing rates of pressure ulcers
- Reducing rates of use of physical restraints
- Reducing incidence of poor performance in nursing homes

The QIOs will be responsible for assisting poorly performing nursing homes and hospitals to show improved performance in these areas. Additionally, the 9<sup>th</sup> SOW specifically instructs QIOs to provide special technical assistance to a small number of very poorly performing nursing homes. This special technical assistance will consist of the QIOs conducting a root-cause analysis in at least one nursing home in each state per year, selected by CMS from a Special Focus Facilities candidate list.

## SOW Includes a "Needs Improvement" List of Facilities

As part of its effort to improve patient safety through the 9<sup>th</sup> SOW, CMS released lists specifically identifying hospitals and nursing homes targeted for improvement in specific areas. For nursing homes, CMS developed two lists of nursing homes targeted for improvement. One list includes facilities targeted for reduction of incidence of high-risk pressure ulcers. The other list identifies nursing homes targeted for the reduction of the use of daily physical restraints. The quality measures CMS used to develop the lists are reported publicly on Nursing Home Compare and can be found at [www.medicare.gov](http://www.medicare.gov).

In addition, CMS developed two lists for hospitals. Hospitals on one list will be targeted to enhance performance under the Surgical Care Improvement Program. The quality measures used to develop this list are reported publicly on [www.hospitalcompare.hhs.gov](http://www.hospitalcompare.hhs.gov). The other list identifies hospitals targeted to reduce pressure ulcers.

## ABOUT FOLEY

Foley & Lardner LLP is a national law firm providing comprehensive legal services for innovative enterprises in the health care, pharmaceutical, biotechnology, and biomedical sectors. Our Health Care attorneys provide counsel on financial transactions, mergers, acquisitions, affiliations, joint ventures, regulatory and government compliance, and business operations. With offices throughout the United States and the backing of Foley's Health Care Industry Team — consistently ranked as one of the top health care law firms nationally and regionally by *Chambers USA* — Foley is well-positioned to serve the wide-ranging needs of health care entities across the country.

## Foley.com

*Foley & Lardner LLP Legal News Alert is intended to provide information (not advice) about important new legislation or legal developments. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments.*

*If you do not want to receive further Legal News Alert bulletins, please e-mail [info@foley.com](mailto:info@foley.com) or contact Marketing at Foley & Lardner LLP, 321 N. Clark Street, Suite 2800, Chicago, IL 60610 or 312.832.4500.*

Identifying poorly performing hospitals and nursing homes is yet another example of CMS's efforts to increase the transparency of health care quality and to provide beneficiaries with the information necessary to make informed health care choices.

### Prevention

In the area of prevention, the 9<sup>th</sup> SOW requires QIOs to work with consumers, physicians, and other caregivers to ensure that "patients get the right care at the right time." The 9<sup>th</sup> SOW contains two cancer-screening mandates (breast and colorectal), two immunization mandates (influenza and pneumococcal), and two disease-management initiatives (diabetes self-management and chronic kidney disease prevention). QIOs are tasked with working with a selected group of "participating practices" that already have implemented electronic health records and that have been certified by a certifying body recognized by the Secretary of HHS to improve breast cancer and CRC screening rates and immunization rates for influenza and pneumococcal pneumonia. QIOs also will address disparities in disease management by working in states with underserved Medicare diabetes populations to improve diabetes measures within those populations.

### Competitive Bidding

In the 9<sup>th</sup> SOW, QIO contracts will be awarded in the eight states of California, Minnesota, Mississippi, North Carolina, Nevada, New York, Oklahoma, and South Carolina through a competitive proposal process. The QIOs in these states failed to meet performance criteria outlined in the 8<sup>th</sup> SOW. Additionally, CMS holds contracts with five QIOs located outside of the states they serve. If CMS receives new proposals from QIOs located within Alaska, Idaho, Maine, Vermont, or Wyoming, the current QIOs will have to compete for 9<sup>th</sup> SOW contracts. The 9<sup>th</sup> SOW also provides opportunities for potential contractors to subcontract with existing QIOs. Additional information regarding QIO contracting is available at:

[http://www.cms.hhs.gov/QualityImprovementOrgs/04\\_9thsow.asp](http://www.cms.hhs.gov/QualityImprovementOrgs/04_9thsow.asp).

### Summary

The 9<sup>th</sup> SOW demonstrates CMS's continued and enhanced focus on improving the quality and safety of services for beneficiaries through direct intervention and signals increased activity by QIOs to drive quality of care. Additionally, the 9<sup>th</sup> SOW is significant because it provides CMS with the tools to better manage the QIOs by linking the work that has been completed by the organizations to outcomes reviewed and measured during the entire three-year period between August 2008 and July 2011. Providers, especially those specifically identified for targeted improvements by QIOs, must be prepared for involvement by QIOs and understand that quality information will be increasingly transparent.

Given the focus of the federal government on quality of care issues, Foley continues to recommend that all health care entities conduct an internal risk assessment or audit related to quality of care issues. Such an assessment will help organizations meet the challenges presented by the increased focus on quality of care.