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## New CMS Guidance Forthcoming on Provider-Based Status and Sharing Space

**Legal Update**

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By Briar Andresen and Katherine Ilten

CMS's David Wright, Director of CMS's Center for Clinical Standards and Quality, signaled in a webinar hosted by the American Health Lawyers Association on November 27, 2018, that new provider-based guidance will be issued by CMS in early 2019. The guidance will ease some of CMS's historical restrictions on provider-based hospital space that is co-located or shared with freestanding space. Mr. Wright said that the guidance may permit a hospital to share certain space with non-hospital entities. He also indicated that a hospital's provider-based status would not be at risk under the new guidance if hallways, waiting areas and elevators are shared, so long as patient safety and quality are not compromised. Mr. Wright also expects that the guidance will liberalize the options for a hospital to share space with visiting physicians, particularly in rural areas where visiting specialists may be co-located with hospital space.

This CMS guidance, which will be published as a Quality, Safety and Oversight memo, will be a major shift for the agency, which (through the CMS Regional Offices) has had a long-standing interpretation prohibiting shared space among provider-based and freestanding entities in any way. The current interpretation has resulted in assessments of overpayments for hospitals that have run afoul of CMS's no-shared-space expectations. This has caused a great deal of consternation for hospitals and physician groups trying to plan efficient, innovative and patient-friendly uses of space.

Fredrikson & Byron's Health Law Group will conduct a webinar on provider-based status once the guidance is formally issued.

Please contact Katie Ilten with questions.

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