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Certified Public Accountants and Advisors

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CHANGES TO CRITICAL ACCESS PROVIDER BASED AND CO-LOCATION REQUIREMENTS

On November 1 the Centers for Medicare and Medicaid Services (CMS) issued the FY 2008 Final Rule for the Outpatient Prospective Payment System (OPPS). Included in this OPPS rule, to be published in the Federal Register on November 27, was the awaited “clarification” of the Critical Access Hospital (CAH) rules related to provider based and co-located facilities.

CMS first issued the proposed CAH rules with the FY 2008 OPPS Proposed Rule on August 2 and requested comments by September 14. CMS received over 200 comments on the CAH proposal. As a result of those comments, the final rules are not quite as onerous as proposed. The relief regards the exemption of Rural Health Clinics (RHC) from the requirements of other off-campus provider based locations created or acquired on or after January 1, 2008. Following is a brief summary of the final rules related to CAHs that modified §485.610 related to the distance requirements for CAHs.

Co-location Requirements of CAH:

The addition of §485.610 (e)(1) and (3) include the requirement that if a CAH or necessary provider CAH co-locates with another hospital or CAH on or after January 1, 2008, the CAH’s provider agreement will be subject to termination unless the co-location situation is terminated.

Necessary provider CAHs that have co-location agreements that are in effect prior to January 1, 2008 are grandfathered as long as there is no change of ownership or the type and scope of services provided by the provider that has co-located with the necessary provider CAH.

These provisions are substantially the same as those proposed by CMS. CMS believes that the existing provisions allowing CAHs to have 25 acute/swing beds and up to 10 beds of each inpatient psychiatric or inpatient rehabilitation are sufficient to provide the needed services to the CAH service area.

Provider Based Location:

In §485.610 (e)(2) and (3) CMS has modified the distance requirements by bringing any off-campus provider based location, except RHC, under the mileage requirements of CAH. These provisions apply to any CAH or necessary provider CAH. Medicare certified Rural Health Clinics are specifically exempted from the mileage provisions because they must meet other specific location requirements regarding Health Professional Shortage Areas (HPSA) or Medically Underserved Areas (MUA).

CMS believes that the statutory mileage requirement of a CAH being at least 35 miles drive (or 15 miles if in mountainous terrain or secondary roads) is applicable to any portion of a CAH.

Since a provider based location is a part of a CAH, the specific off-campus location must meet the distance requirement if the provider based location is created or acquired on or after January 1, 2008. These provisions are applicable to any type of provider based activity such as diagnostic services, therapy, clinics (except RHC), inpatient psychiatric or inpatient rehabilitation units.

If the CAH creates or acquires a provider based location on or after January 1, 2008 that does not meet the distance requirements, the CAH's provider agreement will be subject to termination unless the off-campus arrangement is terminated.

CMS Comments:

Several of the CMS observations and responses to the comments it received are noteworthy. Following is a brief summary. We encourage all CAHs to read the CAH portion of the final rule to get the full flavor of CMS's position.

- CMS relates that grandfathered necessary provider CAHs, including those with co-location agreements in effect prior to January 1, 2008, that have a change of ownership must be transferred to the new owner with an assumption of the provider agreement from the previous owner.
- CMS reasserts its position that a necessary provider designation is specific to the physical location(s) of the CAH in existence at the time of designation. Accordingly the creation of any new location that would cause any part of the CAH to be not in compliance with the distance requirements will cause the entire CAH to violate the distance requirements.
- A CAH with plans underway to build or acquire an off-campus location that will not be completed prior to January 1, 2008 may be able to proceed with the provider based determination. The CMS Regional Office (RO) may on a case-by-case basis make the determination that sufficient planning was "under development" prior to January 1, 2008. Documentation guidelines are included in the rule.
- CMS indicates that the violation of the mileage requirement is a violation of the CAH provider agreement and is a cause for action to terminate the CAH from the Medicare program. Termination proceedings would be in accordance with §3102 of the State Operations Manual which includes a 90-day track. Therefore if the off-campus arrangement were terminated within the 90-day period, the CAH provider agreement would not be terminated.
- CMS reiterates that a CAH may still operate off-campus locations if they are not considered provider based locations (i.e. free-standing physician practices).
- Current off-campus provider based locations would be allowed to relocate under the guidelines included in §485.610 (d). These guidelines are what a necessary provider CAH must meet in order to continue to qualify for CAH status. The requirements necessitate the CAH remain essentially the same provider and continue to provide services to the same rural area.

If you have questions concerning these provisions or others related to Critical Access Hospitals or if you would like a copy of the CAH portion of the final OPPS rule, please contact Tommy Barnhart at the following:

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