Guidance regarding Hospital Outpatient Department (HOPD) – Provider Based and Shared Space

The purpose of this guidance is to advise hospitals of the recent information we have received from CMS related to provider based and shared space. In addition we want facilities to be aware how the Department will be evaluating requests made to add provider based locations to the hospital license. CMS requires the State Survey Agency to evaluate each general hospital as a whole for compliance with the Conditions of Participation and to certify the hospital as a single provider institution, including all components. DOH must consider hospitals in their entirety, including any components housed away from the main campus, as singular entities.

A hospital must comply with the definition of a hospital (Social Security Act (SSA) 1861(e)) which is implemented at 42 Code of Federal Regulations 482.1. Hospitals are recognized as "providers of service" in SSA 1861(u). Under SSA 1866(a), any provider of services may be qualified to participate in Medicare if it enters into an agreement with Medicare. Such agreements with Medicare must apply to the provider in its entirety.

CMS does recognize that components of hospitals may be separately housed from the main provider. In these instances, the provider agreement applies to these components in their entirety. Official CMS guidance on this issue is found in the State Operations Manual (SOM), Chapter 2, Section 2026. This guidance specifically requires the State Certification Agency to evaluate each general hospital as a whole for compliance with the Conditions of Participation and to certify the hospital as a single provider institution, including all components. The SOM adds that it is not permissible to certify only part of a general hospital. The provider-based requirements and obligations found at 42 CFR Section 413.65 lists all of the criteria for components of the hospital to be considered as parts of the hospital, whether those components are located on or off the main campus of the main provider.

Under the provider-based status regulation at 42 CFR 413.65, a "department of a provider" means a facility or organization that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of the same type as those furnished by the main provider under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A department of a provider comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility.

SOM, Chapter 2, Section 2026A:

It is not permissible to certify only part of a general hospital. However, the following are not considered parts of the hospital and are not to be included in the evaluation of the hospital's compliance:

* Components appropriately certified as other kinds of providers or suppliers. i.e., a distinct part SNF and/or distinct part NF, HHA, RHC or hospice; and

* Excluded residential, custodial, and non-service units not meeting the definitions in §1861(e)(1) or (j)(1) of the Act."

SOM, Chapter 2, Section 2004 - Provider-Based Determinations (Rev. 123, Issued: 10-03-14, Effective: 10-03-14, Implementation: 10-03-14) states as follows: "Distinct Part" and "Provider-Based" are not synonymous terms. When a location, department, remote location or satellite is established as provider-based, it is an integral part of the provider, covered by the provider's Medicare agreement, and therefore subject to the same Medicare conditions of participation as any other part of that provider. Unless covered by a specific exception listed in the rule, the provider-based regulations at §413.65 apply to any provider of services under the Medicare program, as well as to physicians' practices or clinics or other suppliers that are not themselves providers, but which the provider asserts are an integral part of that provider.

Impact on State Licensure

Hospital requests to add a provider-based location to the state hospital license that the hospital will also be adding to the hospital CMS Certification Number (CCN): If uses of shared space which prevent certification of a space as provider-based are identified at a provider-based location either before occupancy survey or during the occupancy survey, the Department will not be able to license the location pursuant to ***State Regulation § 103.4***. *Functions. The governing body, with technical assistance and advice from the hospital staff, shall do the following:. . . (3) Take all reasonable steps to conform to all applicable Federal, State, and local laws and regulations*.

Hospital requests to add a provider-based location to the hospital license that the hospital will **not** be adding to the hospital CMS Certification Number (CCN): If uses of shared space which would prevent certification of a space as provider-based are identified at a provider based location either before occupancy survey or during the occupancy survey, the Department will grant the State licensure occupancy contingent upon the hospital not adding the location to the hospital CCN.

How will the Department determine if there are uses of shared space which prevent certification of a space as provider-based? The DOH will assess if a hospital department includes the space, equipment, and personnel used to furnish hospital services consistent with the position that CMS must consider hospital space in its entirety when considering the component's compliance with applicable statutory and regulatory requirements and official CMS guidance pertaining to the definition of a "hospital."

When a would-be hospital department shares space with freestanding offices, DOH must consider the entire space that contains the purported hospital department and the space's relationship to the hospital's Conditions of Participation (CoPs) at 42 CFR Part 482 and compliance with the provider-based status requirements and obligations of 42 CFR 413.65.

Since hospital components must be considered in their entirety, it is not possible to consider only parts of a singularly-contained, clearly-defined space. A suite in a medical office building may be a singular component for compliance with the hospital CoPs and Medicare provider-based

status requirements and obligations. However, DOH cannot consider only portions of a singular component when determining if these criteria are met. A hospital may not lease or otherwise obtain use of a portion of a singular component and create a smaller component within that space. Certain features, such as shared entryways, interior hallways, bathroom facilities, treatment rooms, waiting rooms, and registration areas are all indications that a purported hospital space may instead be a part of a larger component. Hospitals may not situate themselves inside a freestanding office space and consider certain services furnished therein as "hospital" services while other services furnished within the same overall space are not hospital services. This is true even when the hospital attempts to create a subsection of the overall space through a sublease or other agreement.

We encourage hospitals to evaluate all existing provider-based locations for uses of shared space which would not be permitted under the Medicare provider-based rules based on this information. The information was provided in conjunction with a CMS denial of a Pennsylvania hospital's request to add an off-campus location to the Medicare certification.

If the Department is on a complaint investigation (associated with an outpatient location under the hospital license), State licensure, recertification, or validation survey, we will be evaluating provider-based locations for possible shared space issues.

Should you have any questions please contact Garrison Gladfelter at 717-783-8980