



PG Bulletin

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New CMS Draft Guidance Would Liberalize Survey Requirements for Hospitals Sharing Space

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On May 3, 2019, the Centers for Medicare & Medicaid Services (CMS) issued draft [guidance](#) for hospitals co-located within the same building or campus as other hospitals and health care facilities. Over recent years, CMS has commented on its view of co-located hospitals through survey activity and in public announcements. CMS' announced goal is to ensure patient safety and quality of care while allowing for flexibility. The Guidance was released in draft form to allow industry comments to be submitted until July 2, 2019.

Summary of the Draft Guidance

The Guidance would add information to the State Operations Manual. Under the Guidance, CMS indicates that each co-located facility would need to independently meet the Medicare conditions of participation for hospitals (or such other applicable facility type). Under the Guidance, the hospital that is in co-located space must have defined and distinct spaces for

operation over which they have control. This separateness will preserve patient privacy and ensure that the certified hospital maintain control of the premises adequately to ensure a safe environment. Shared spaces (public spaces and public paths of travel such as lobbies, waiting rooms, reception, public restrooms, and elevator corridors) are permitted and are the compliance responsibilities of both of the certified providers. A public path of travel through a clinical space is not permitted under the Guidance. This does not include hallways within a single hospital such as a hallway through an inpatient nursing unit.

Under the Guidance, a hospital must provide all services required under the hospital's Medicare conditions of participations. However, some of the services may be provided under contract or arrangement from the other co-located facility that is sharing space. The Guidance specifically mentions laboratory, dietary, pharmacy, maintenance, housekeeping, and security as services that may be secured under contract. Staff may only serve one of the providers at a single time, although the staff may service both hospitals at different times. Under the Guidance, each hospital would be responsible for the training and supervision of the staff as it relates to the staff serving it. Under the Guidance, hospitals without emergency departments must independently have policies/procedures in place for addressing individuals' emergency care needs.

Survey Deficiency Risks Under Draft Guidance

The Guidance clarifies how CMS and State Agency (SA) surveyors will evaluate a hospital's space sharing and contract arrangements with a co-located health care facility when surveying the hospital's independent compliance with Medicare's Conditions of Participation (CoPs). Although the Guidance has not yet been finalized, it is clear there will be new survey procedures for hospitals co-located with another health care entity. Planning ahead for the new survey procedures will prevent compliance deficiency citations in the future.

The Guidance explains that a hospital's failure to comply with CMS' Guidance for space sharing and contract arrangements with a co-located health care facility can potentially lead to

compliance deficiency citations for the hospital or both entities relating to the following CoPs and others:

- Nursing Services (42 C.F.R. § 482.23)
- Infection Control (42 C.F.R. § 482.42)
- Patient's Rights (42 C.F.R. § 482.13(c)(1), (c)(2) and (d))
- Confidentiality of Medical Records (42 C.F.R. § 482.24(b)(3))
- Quality Assurance and Performance Improvement (QAPI) (42 C.F.R. § 482.21)
- Governing Body and Contracted Services (42 C.F.R. § 482.12(e))

If a deficiency is cited in a space that is shared by the hospital and a co-located health care facility that is a CMS-certified provider or supplier, both the hospital and the co-located health care facility can be cited for the compliance deficiency. The Guidance also instructs surveyors to visit the actual physical location where on-site services under contract with a co-located health care facility are being provided to hospital patients. If noncompliance is discovered, the surveyor is instructed to file a complaint with the SA or Regional Office regarding the co-located entity that is not subject to the survey in progress. SA surveyors are further instructed to contact their supervisor to seek authorization to conduct a complaint survey of the co-located entity while still onsite.

Failure to comply with the Guidance could even result in an Emergency Medical Treatment and Labor Act (EMTALA) violation. The Guidance explains that a hospital without an emergency department (ED) may contract with a co-located hospital for staff to perform the appraisal and initial treatment of patients experiencing an emergency when the contracted staff are not working/on duty simultaneously at the co-located hospital. CMS acknowledges that there will be instances when the appraisal and initial treatment performed in the hospital without the ED requires a transfer of the patient to the co-located hospital's ED for continuation of care. CMS explains that the hospital without the ED can contract with the co-located hospital to refer and transfer patients with emergency conditions to the co-located acute care hospital if it cannot provide care beyond initial emergency treatment. Importantly, CMS notes that "Hospitals without emergency departments that contract for

emergency services with another hospital's emergency department are then considered to provide emergency services and must meet the requirements of EMTALA.”

Checklist for Survey Preparation for Co-Located Hospitals

The following checklist can be used by co-located hospitals to prepare for the new survey procedures outlined in the Guidance.

Shared Space

- *Floor Plan:* Hospital must have a floor plan that distinguishes spaces used by the hospital, spaces used by the co-located health care facility, and shared spaces.
- *Signage:* Spaces that are shared by the hospital and the co-located entity must be identified with signs as belonging to both co-located entities. Signs should also be used to alert the public when they are exiting shared space and entering distinct spaces of operation for which only one of the co-located entities maintains control.

Contracted Services

- *Contracted Services List:* Hospital must maintain a list of all services that the hospital has contracted to use from other co-located entities.
- *Written Contracts:* Written contracts must be in place between the hospital and a co-located health care facility to document arrangements in which the co-located providers obtain staff and/or clinical services from each other.
- *QAPI Program:* Hospital must document how the quality, safety, and outcomes of the contracted services are monitored by the hospital and included in the hospital's QAPI program.

Contracted Staff

- *Written Contracts:* The hospital's contracts for staffing services with a co-located entity should address (1) adequacy of staff levels, (2) the hospital's oversight and periodic evaluation of the contracted staff, (3) training and education of contracted staff, and (4) requirements that contracted staff adhere to the quality and performance improvement and clinical practice standards of the hospital.
- *Staff Schedules:* Hospital must have schedules to demonstrate contracted staff are assigned to work solely for the hospital during a specific shift and do not “float” between the hospital and the co-located health care facility

during the same shift. This does not apply to members of the hospital's medical staff.

- *Education and Training:* Hospital should document in personnel files and governance documents that contracted staff receive the same education and training provided to direct employees of the hospital.
- *Monitoring, Evaluation, and Clinical Requirements:* Hospital should document in personnel files and governance documents that the performance of contracted staff is monitored and periodically evaluated by the hospital, and that contracted staff meet the same clinical practice requirements as other staff in the hospital.
- *Medical Staff:* Documentation should be present to demonstrate that any members of the hospital's medical staff who care for patients in both the hospital and the co-located health care facility are privileged and credentialed at the hospital.

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