



CMS PROPOSES UPDATES TO CRITICAL ACCESS HOSPITAL CONDITIONS OF PARTICIPATION

August 19, 2022

On July 6, 2022, the Centers for Medicare and Medicaid Services (CMS) released proposed revisions to Medicare's Conditions of Participation (CoPs) for Critical Access Hospitals (CAHs).¹ The proposed rule refines the definition of "primary road" in the context of the CAH distance requirement, realigns CMS's periodic reassessment process for verifying CAH eligibility, and revises CAH CoPs related to patient rights, medical staff, infection control, and quality reporting.

The Social Security Act stipulates that a facility designated as a CAH must be located more than a 35-mile drive, or a 15-mile drive in mountainous terrain or in an area with only secondary roads available, from the nearest hospital.² A CAH designated as a necessary provider of healthcare services by its state is exempt from this distance requirement. Prior to the issuance of CMS's recent proposed rule, no formal regulatory language referenced or defined the term "secondary road," or its converse, the "primary road." Since 2015, CMS has applied the definition of primary road included in its State Operations Manual (SOM) for the purposes of determining CAH eligibility. The SOM defines a primary road as any U.S. highway, including any road: 1) in the National Highway System, 2) in the Interstate System, or 3) which is a US-Numbered Highway.

CMS seeks to revise the definition of a primary road to "[a] numbered Federal highway, including interstates, intrastates, expressways, or any other numbered Federal highway; or [a] numbered State highway with 2 or more lanes each way." The change is designed to afford CAHs maximum flexibility in satisfying the distance requirement and to minimize disruptions to facilities which furnish healthcare in rural communities.

CMS further proposes to streamline enforcement of the CAH distance requirement by shifting its focus from roadway designations to expansions in regional access to care. Under the updated review procedure, CMS will assess all hospitals and CAHs within a 50-mile radius of a CAH during its review of initial eligibility and re-certify on a three-year cycle. During each three-year review, CMS will grant immediate recertification to CAHs with no new hospitals within 50 miles. Where a new hospital operates within a 50-mile radius of a CAH, CMS will conduct an additional eligibility review

¹ 87 Fed. Reg. 44502.

² 42 U.S.C. 1395i-4.

to include an examination of mountainous terrain and primary roadways. CAHs found in non-compliance with distance requirements may be subject to enforcement actions.

CMS also proposes to supplement CAH CoPs related to patient rights. Under the proposed rule, CAHs must inform patients of their rights, address privacy and safety, release medical records as reasonably requested by the patient, conform to certain standards when using restraint or seclusion to protect the physical safety of patients and staff, and honor patient visitation rights.

Additionally, in alignment with current standards for hospitals, CMS proposes to allow for either a unique medical staff for each CAH or for a unified and integrated medical staff shared by multiple hospitals, CAHs and REHs within a health care system. Where a CAH is part of a system comprised of multiple separately certified facilities, it may elect to participate in a unified and integrated program for infection prevention and antibiotic stewardship. Likewise, CAHs operating within multi-facility systems may take advantage of a unified and integrated Quality Assurance and Performance Improvement (QAPI) program. The proposed COP updates permitting greater system integration for CAHs should result in cost savings and improved allocation of limited resources throughout health systems.

CMS has solicited feedback on these changes by or before August 29, 2022. For additional inquiries regarding critical access hospitals, please contact a member of Hancock Daniel's [Licensure, Certification and Enrollment](#) team.

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