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CMS: CAHs May Share Space With Other Providers; Keep Eye on Stark, CoPs

By Nina Youngstrom

In Nov. 20 guidance, CMS said critical access hospitals (CAHs) are free to share space with unrelated providers, except for hospitals. Co-location itself won't jeopardize their Medicare participation, although CAHs should keep an eye on the Stark Law.[1] The new CMS memo is the CAH version of its 2021 co-location guidance for acute-care hospitals, which was pretty relaxed about space sharing.[2] Both memos emphasized the importance of the hospital and CAH safeguarding their own compliance with the Medicare conditions of participation (CoP).

The memo "clarifies expectations" about CAH space-sharing arrangements with other health care entities. The arrangements include time-sharing and leased space. "CAHs may not co-locate with another acute care hospital or CAH, but this would not generally limit space sharing arrangements with other types of healthcare entities such as private physician practices," CMS explains. But it warns CAHs to consider the risk they pose to their compliance with the CoPs before setting up a space-sharing arrangement.

CMS is "demonstrating flexibility and respect for rural care, which has a significant access problem right now," said attorney Larry Vernaglia, with Foley & Pardner LLP. "There's a huge access problem in rural areas, especially with specialist physicians, and they're the ones likely to take advantage of this."

The memo describes two types of arrangements. The first is a time-share in which another provider or entity (except a hospital or other CAH) provides outpatient services at the CAH, using CAH staff, space, supplies, and equipment for a specific time period. "Under such an arrangement, the CAH remains responsible for maintaining and demonstrating compliance with all applicable CoPs at all times including the time established under the time share arrangement," according to the memo, which was written for state survey agencies by CMS's directors of the Quality, Safety & Oversight Group and Survey & Operations Group. The second is leased space, which lets another provider or entity (except a hospital or CAH) lease space in the CAH facility. "As the CAH would not be operating within that leased space, it would not be responsible for demonstrating compliance with the CoPs within the leased space during the term of the lease except for the requirements for the physical structure/environment of the CAH and its building that may be contained within that space," CMS said.

Vernaglia reminds CAHs interested in space sharing to familiarize themselves with local licensing permits. "Just because CMS lets you do it doesn't mean the state health department will tolerate that level of co-location," he noted.

The memo also raised the specter of a Stark Law violation. Because space-sharing arrangements with a referring physician or immediate family member probably implicates the physician self-referral law, CAHs should ensure they satisfy a Stark exception.

"It would be remuneration unless it meets a Stark exception," Vernaglia noted. For example, the CAH can't provide free space to a referring physician. "I would also be careful of facility versus non-facility billing rules," he said. Medicare pays more for physician services provided in private office space.

Contact Vernaglia at lvernaglia@foley.com.

1 Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality/Quality, Safety & Oversight Group, "Guidance for Time-share and Leased Space Arrangements in Critical Access Hospitals (CAHs)," Ref: QSO-25-08-CAH, November 20, 2024, https://bit.ly/4gdY4yQ.
2 Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality/Quality, Safety & Oversight Group, "Guidance for Hospital Co-location with Other Hospitals or Healthcare Facilities," memorandum, Ref: QSO-19-13-Hospital, revised November 12, 2021, https://go.cms.gov/3Cbzl9m.