



Regulatory Advisory

September 29, 2017

CMS RELEASES GUIDANCE ON HOSPITAL DEFINITION

On Sept. 6, the Centers for Medicare & Medicaid Services' (CMS) Survey and Certification (S&C) Group released [guidance](#) clarifying how it will determine whether a facility qualifies as a hospital under Section 1861(e)(1) of the Social Security Act (SSA), which requires hospitals participating in Medicare and Medicaid to be primarily engaged in providing services to inpatients. The guidance applies to acute care hospitals, children's hospitals, cancer hospitals, long-term care hospitals, and inpatient rehabilitation hospitals. It does not apply to psychiatric or critical access hospitals.

In the new guidance, S&C says it will take a multi-factor approach to determine if a hospital is primarily engaged in providing inpatient services and will examine a hospital's characteristics in their totality. For example, CMS will review average daily census, average length of stay (ALOS), the number of off-campus outpatient locations and provider-based emergency departments, the volume of inpatient and outpatient surgical procedures, staffing patterns and more. Hospitals will not be required to have specific inpatient-to-outpatient ratios. Additionally:

- The guidance states that, “[g]enerally, a hospital is primarily engaged in providing inpatient services under section 1861(e)(1) of the Act when it is directly providing such services to inpatients.”
- S&C will require that a hospital have at least two inpatients in order to be surveyed for compliance with the Conditions of Participation. If a hospital does not have two inpatients, surveyors will conduct an analysis of admission and possibly other data to determine if they will return at a later time.
- Hospitals with an average daily census lower than two and an average length of stay below two midnights over the previous year appear especially at risk of being told they do not qualify as a hospital under Medicare, subsequent to a more robust examination of additional factors.

Meeting the definition of a hospital at Section 1861(e)(1) is one of the criteria for Medicare hospital participation. Hospitals seeking to participate in Medicare and Medicaid must meet all provisions of Section 1861(e), as well as other requirements.

OUR TAKE

The AHA believes that CMS has taken a reasonable approach to interpreting the “primarily engaged” standard in the SSA definition of a hospital. Failing to meet a single benchmark, such as an ALOS of two midnights, will simply mean that the CMS Regional Office will take a closer look at the organization to determine if it really meets the SSA definition of a hospital.

FURTHER QUESTIONS

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