MEDICARE PROGRAM; PROPOSED CHANGES TO THE HOSPITAL IPPS AND FY 2006 RATES

PRE-RELEASE APRIL 25, 2005

EXCERPTS OF KEY PROVISIONS EFFECTING CRITICAL ACCESS HOSPITALS

Below are excerpts taken from the proposed rule for the purpose of outlining the provisions. They should be considered in conjunction with, but not distinct from the rule as proposed by CMS in its entirety. (Page 79-90 of the third PDF.)

CONTINUED PARTICIPATION BY CAHS IN LUGAR COUNTIES (begins Page 79 of 3rd PDF)
Definition of Rural:

- First, a CAH must not be located in an MSA as defined by the Office of Management and Budget, not be deemed to be located in an urban, and not be reclassified by CMS or the MGCRB as urban for purposes of the standardized payment amount, nor be a member of a group of hospitals reclassified to an urban area.
- Second, if a CAH does not meet the first criterion, if located in an MSA, a CAH will be treated as rural if it has reclassified under 42 CFR 412.103.
- Third, as we stated in the FY 2005 IPPS final rule, if the CAH cannot meet either of the first two requirements and is located in a revised labor market area (CBSA) under the standards announced by OMB on June 6, 2003 and adopted by CMS effective October 1, 2004, it has until September 30, 2006, to meet one of the other classification requirements without losing its CAH status.

Lugar Counties:
Hospitals that are located in a rural county that is adjacent to one or more urban counties are considered to be located in the urban MSA to which the greatest number of workers in the county commute, if certain conditions are met. The provision is referred to as the "Lugar provision" and the counties described by it are referred to as the "Lugar counties."

We believe that when a CAH's status as being located in a Lugar county occurs as a result of changes that the CAH did not originate and that were beyond its control, such as a change in the OMB standards for labor market area definitions, it is appropriate for the CAH to be allowed a reasonable opportunity to reclassify to rural status. We are proposing to make changes to §485.610(b) of the regulations that would permit CAHs located in a county that, in FY 2004, was not part of a Lugar county, but as of FY 2005 was included in such a county as a result of the new labor market area definitions, to maintain their CAH status until September 30, 2006. These changes would permit CAHs in newly designated Lugar counties to continue participating in Medicare as CAHs until September 30, 2006. We expect that this will provide these CAHs with sufficient time to seek reclassification as rural facilities under the current regulations at §412.103. In other words, after October 1, 2006, these facilities must meet at least one of the criteria in §412.103(a)(1) through (a)(3) to be eligible to reclassify from urban to rural status. Once the §412.103 reclassification is approved, the facilities would meet the CAH rural location requirements in §485.610(b)(2).

PROPOSED POLICY CHANGE RELATING TO DESIGNATION OF CAHS AS NECESSARY PROVIDERS (beginning page 82 of 3rd PDF)

Currently, a CAH is required to be located more than a 35-mile drive (or in the case of mountainous terrain or secondary roads, a 15-mile drive) from a hospital or another CAH, unless the CAH is certified by the State as a necessary provider of health care services to residents in the area. Under this provision, after January 1, 2006, States will no longer be able to designate a CAH based upon a determination that it is a necessary provider of health care. The regulations are limited to CAHs that were necessary providers as of January 1, 2006, and does not address the situation where the CAH is no longer the same facility due to relocation, cessation of business, or a substitute facility. It becomes crucial to define whether the necessary provider designation remains pertinent in the event the certified CAH builds in a different location.

The first step of this process is to determine whether building a new CAH facility in a different location is a replacement of an existing facility in essentially the same location, a relocation of the facility in a new location, or a cessation of business at one location and establishment of new business at another location.

a. Determination of the Relocation Status of a CAH

(1) Replacement in the same location.

If the CAH is constructing renovation of the same building in the same location, the renovation is considered to be a replacement of the same provider and not relocation.

We would consider a construction of the CAH to be a replacement if:

- Construction was undertaken *within 250 yards of the current building*, or
- C*onstructed on land that is contiguous to the current CAH*, and that land was owned by the CAH *prior to* enactment of Pub. L. 108-173 (December 8, 2003), and the CAH is operating under a State-issued necessary provider waiver

The provisions of the grandfathered necessary provider designation would continue to apply regardless of when the construction or renovation work commenced and was completed.

(2) Relocation of a CAH

If the CAH is constructing a new facility in a location that does not qualify the construction as replacement of an existing facility in the same location, then we would need to determine if this building would be a relocation of the current provider or a cessation of business at one location and establishment of a new business at another location. A provider that is changing location is considered to have closed the old facility if the original community or service area can no longer be expected to be served at the new location. Distance will be considered, but it will not be the sole determining factor in granting the relocation of a CAH under the same provider agreement.

In the event that CMS determines the rebuilding of the CAH in a different location *to be a relocation,* the provider agreement would continue to apply to the CAH at the new location if it is:

- Within the same service area
- Serving the same population
- Providing essentially the same services (75 percent of the range of services are maintained in the new location)
- With the same staff (at least 75 percent of the same staff)

(3) Cessation of business at one location.

Cessation of business is a basis for voluntary termination of the provider agreement. If the CAH relocation results in the cessation of furnishing services to the same community, we would not consider this to be a relocation, but instead would consider such a scenario a cessation of business at one location and establishment of a new business at another location

The cessation of business by a CAH automatically terminates the CAH designation, regardless of whether the designation was obtained through a necessary provider determination.

In such a situation, the regulations require the provider to give advanced notice to CMS and the public regarding its intent to stop providing medical services to the community. There is no appeals process for a voluntary termination.

b. Relocation of a CAH Using a Necessary Provider Designation to Meet the CoP for Distance

Once it has been determined that constructing a new facility will cause the CAH to relocate, *the second step* is to determine if the CAH that has a necessary provider designation can maintain this designation after relocating.

To provide flexibility for a facility designated as a CAH whose location may change, but is essentially the same facility in a different location, we are proposing to use the specified relocation criteria as the initial step to determine continuing necessary provider status. When a CAH is determined to have relocated, it may nonetheless continue to operate under its necessary provider designation that exempts the distance from other providers only if the following conditions are met:

(1) The relocated CAH has submitted an application to the State agency for relocation prior to the January 1, 2006. The following items would need to be included in the application:

- A demonstration that the CAH will meet the same State criteria for the necessary provider designation that were established when the waiver was originally issued.
- Assurance that, after the relocation, the CAH will be servicing the same community and will be operating essentially the same services with essentially the same staff (that is, proof that it is serving at least 75 percent of the same service area, with 75 percent of the same services offered, and staffed by 75 percent of the same staff, including medical staff, contracted staff, and employees).
- Assurance that the CAH will remain in compliance with all of the CoPs in the new location.
- Proof that construction plans were “under development” prior to the effective date of Pub. L. 108-173 (December 8, 2003)

(2) In the application, the CAH demonstrates that the replacement will facilitate the access to care and improve the delivery of services to Medicare beneficiaries.