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Co-Location of Hospital Space and Space Sharing
CMS Releases Draft Guidance

On May 3, 2019, the Centers for Medicare & Medicaid Services (CMS) issued long-awaited draft guidance regarding compliance with the hospital Conditions of Participation at 42 C.F.R. Part 482 (CoPs) and survey procedures for hospitals co-located with other hospitals or healthcare entities ("Draft Guidance"). Co-location is where two hospitals, or a hospital and another healthcare entity, are located on the same campus as, or in the same building used by, another hospital or healthcare facility. The Draft Guidance is intended to provide clarity in the application of previous sub-regulatory guidance that may have caused confusion for surveyors and providers with respect to properly arranging shared spaces, staffing, contracted services and emergency services in a hospital co-located with another hospital or healthcare entity.

As co-location arrangements among hospitals and healthcare facilities have increased in recent years, CMS has taken the first step in revising its previously held restrictive stance on co-location by providing clarity on permissible co-location arrangements and the survey process. CMS emphasizes in its Draft Guidance that, regardless of the situation, when a hospital is in the same location (campus or building) as another hospital or healthcare facility, each entity is responsible for demonstrating separate and independent compliance with the hospital CoPs.

CMS will be accepting comments on the Draft Guidance through July 2, 2019.

Distinct Space and Shared Space

Per the CMS Draft Guidance, a hospital must have defined and distinct spaces of operation for which the hospital maintains control at all times. Distinct spaces would include clinical spaces designated for patient care, which is necessary for the protection of patients, including the patient's right to privacy, to receive care in a safe environment and their right to confidentiality of medical records. The Draft Guidance makes clear that clinical spaces cannot be shared. Clinical space is defined as any non-public space in which patient care occurs, such as an inpatient nursing unit, operating room or post anesthesia care unit. CMS emphasizes that sharing clinical space could jeopardize the patient's right to personal privacy and confidentiality of their medical records.

However, the co-located entities are permitted to share public spaces and public paths of travel that are utilized by the hospital and the co-located healthcare entity.

Examples of public spaces and public paths of travel would include:

- Public lobbies
- Waiting rooms and reception areas (with separate "check-in" areas and clear signage)
- Public restrooms
- Staff lounges
- Elevators and main corridors through non-clinical areas
- Main entrances to a building

The Draft Guidance states that travel between separate entities that utilizes a path through clinical space of a hospital by another co-located entity in the same building is not permitted as it could create patient privacy, security and infection control concerns.

The Draft Guidance provides, as an example, that a public path of travel would be a main hospital corridor with distinct entrances to departments. On the other hand, a hallway, corridor or path of travel through an inpatient unit or hospital department would not be considered a public path of travel.

When surveying a hospital, surveyors will be required to ask for a floor plan that distinguishes the spaces used by the hospital being surveyed and the spaces used by the other co-located entity. The floor plan must clearly identify which healthcare entities use the space. If both entities utilize the same space, then any non-compliance identified in that space could be considered non-compliance for both entities.

Contracted Services

Services may be provided under contract or arrangement with another co-located hospital or healthcare entity, such as laboratory, dietary, pharmacy, maintenance, housekeeping and security services. It is also permissible for a hospital to obtain food preparation and delivery services under arrangement from the entity in which it is co-located, in addition to utilities such as fire detection and suppression, medical gases, suction, compressed air and alarm systems, such as oxygen alarms.

Per the Draft Guidance, surveyors will inspect the actual physical location where the contracted services (such as the laboratory or kitchen) are being provided if it is physically located and provided onsite.

When a contracted service is not located or is not being provided onsite (such as a laundry service for hospital linens), surveyors are not required to survey the offsite location.

Additionally, surveyors will assess how the governing body ensures compliance with the CoPs through Quality Assurance and Performance Improvement (QAPI) activities.

Staffing Contracts

When staff are obtained under arrangement from another co-located entity, they must be assigned to work solely for one hospital during a specific shift and cannot "float" between the two hospitals during the same shift. CMS clearly states that staff working at one hospital while concurrently being "on call" at another is not permitted. The Draft Guidance does allow for directors of labs, pharmacy and nursing to serve those roles in both hospitals, but it cannot be simultaneously.

Surveyors will review the contracts for staffing services with co-located entities to ensure that they provide, among other things, adequate staff levels, adequate oversight and proper training. Additionally, surveyors will ask the governing body to verify that any clinical services being provided under contract from the other entity are not being simultaneously "shared" with another hospital or entity. Surveyors will review staffing schedules to verify that individuals providing contracted services are only scheduled to work at one facility per shift, and will inquire as to how the governing body and hospital monitors the performance of its contracted services.

Emergency Services

Hospitals without emergency departments must have appropriate policies and procedures in place for addressing individuals' emergency care needs 24 hours per day and seven days per week. Under the Draft Guidance, hospitals without emergency departments that are co-located with another hospital may not arrange to have that other hospital respond to its emergencies in order to appraise the patient and provide initial emergency treatment.

There may be times, however, when appraisal and initial treatment performed in one hospital requires an appropriate transfer of the patient to the other co-located facility for continuation of care. Per the Draft Guidance, it is acceptable that the hospital without an emergency department arranges to refer or transfer patients with emergency conditions to the co-located acute care hospital if it cannot provide care beyond initial emergency treatment (e.g., CPR and use of an AED).

When surveyors are evaluating the emergency care of patients in a hospital without an emergency department that is co-located with another healthcare entity, they will review the following:

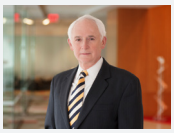
- Does the hospital respond to its own in hospital emergencies, with its own trained staff (i.e., not another hospital's or entity's staff)?
- Does the hospital have proper emergency equipment in the event that a patient requires resuscitation (e.g., AED, code cart, intubation tray, medications)?
- Is hospital staff properly trained in the use of the emergency equipment?
- Is the hospital's emergency equipment properly maintained (e.g., drugs unexpired, sterile equipment, code cart stocked)?
- Is hospital staff properly trained for appraisal of emergencies, initial treatment and referral when appropriate?

If the hospital has no emergency department, but has its emergency services provided under a contract with an emergency department of a co-located hospital, surveyors will verify that the hospital meets the EMTALA requirements. If the emergency services are provided by staff under contract, surveyors will verify that staff are immediately available at all times and only committed to services at that hospital during those times.

Conclusion

Hospitals and healthcare entities that are currently co-located or sharing space, or intend to co-locate or share space, should review the Draft Guidance in detail. CMS will be accepting comments on this Draft Guidance through July 2, 2019. Comments or questions can be submitted to HospitalSCG@cms.hss.gov. If you would like more information about the Draft Guidance, or would like to discuss the implications of the Draft Guidance for your business or practice, please speak to one of the authors or your firm contact.

Contacts



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