Critical Access Hospitals
The Regulatory Process

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The Regulatory Focus

- The fundamental principal of the state regulatory process is that it should be fair and impartial, with a statewide consistency in its application of the standards.
- While Licensing is a legally enforced quality control process, it mandates a rather basic level of quality because licensing laws are the floor below which it is not legal to operate.

The Regulatory Focus

- The federal survey process is similar in that it should be a fair and impartial process with consistency to purpose.
- It differs in there is a single "Condition of Participation" (COP) standard for the delivery of Critical Access Hospital services applied countrywide, without consideration of states individual unique circumstance.

Challenges To The Regulatory Focus

- One size does not necessarily fit all. Each state is very different in its cultural background, values, geography.
- Arriving at a national consensus on all issues is, and probably will continue to be, very difficult and cumbersome.
- Not to mention how difficult it is to reach consensus on all modifications or changes to the COP required by individual state circumstances. Federal changes are unlikely.

Regulatory Distinction

- This then is the beginning of a diversion from the state licensing process versus the Federal Certification process.
- State administrative rules can be developed to consider an individual state's CAH circumstances.
- The State CMS survey agency measures compliance to the Federal "Conditions of Participation" using guidance documents implemented by the Center for Medicare/Medicaid.

Licensed Under State Authority - 50-5-204 MCA

- Issuance and renewal of licenses-inspections (2) "…the department or its authorized agent shall inspect the facility without prior notice to the operator or staff".
- (3) "…if the facility meets minimum standards and the staff is qualified, the department shall issue a license for a period of 1 to 3 years in duration".

Certified Under Federal Authority

- Compliance to state law is required. A facility must have a state license to operate.
- Compliance to the federal CMS "Conditions of participation" is voluntary. A facility does not have to be certified to operate.

Conflicts With The Two Authorities Having Jurisdiction

- While the state agency verifies the facility is licensed as required by state law, they do not care when.
- The facility may have recently under gone a state licensure survey and have been granted a extended three year license.
- There is a good possibility of a CMS validation survey during the same period of licensure.

Why Are the Surveys Different?

- Licensure Bureau does not certify any services for participation in Medicare Medicaid, i.e. swing bed services.
- Conversely the Certification Bureau does not enforce all State regulations or administrative rules.

Why Are the Surveys Different?

- The state has adopted and incorporated CFR 485, Subpart F, updated through May 2005.
- The federal standard will continue to evolve, but the state standard is set to the standards as they were in May, 2005.
- Both Bureaus do work together to try to avoid conducting two surveys on a facility.

A Critical Access Hospital (CAH) Is:

- designated as a CAH by the State in which it is located and meets the following criteria:
  - a rural public, non-profit or for-profit hospital; or is a hospital that was closed within the previous ten years; located in a State that has established a State plan with CMS for the Medicare Rural Hospital Flexibility Program;
  - located more than a 35-mile drive from any other hospital or CAH; **or** is certified by the State in the State plan as being a "**necessary provider"** of health care services to residents in the area;

A Critical Access Hospital (CAH)

  - Makes available 24-hour emergency care services 7 days per week with licensed staff on-site or available as follows:
    - RN within 30 minutes.
    - MD, DO, PA-C, NP on-call and available within 30 minutes. (90 minutes in frontier areas).
  - is limited to 25 beds for acute level inpatient care; the 25 beds may be used interchangeably for swing bed services, provided the facility has a CMS approved swing-bed program;
  - Provides an annual average length of stay of 96 hours per patient for acute care patients;

CAH Criteria Exception-Hospice:

- An exception has been made by CMS for hospice admissions to a CAH. A certified hospice may contract with a CAH to provide the hospice hospital benefit.
- Reimbursement from Medicare is made to the hospice.
- The CAH may dedicate beds for hospice use, but the beds must be included in the 25 bed limitation.
- However, the hospice patient does not contribute to the CAH's 96-hour annual average length of stay computation.
- The hospice patient can be admitted to the CAH for any acute care involved in their treatment plan or for respite care.
- The CAH negotiates its reimbursement through private agreement with the hospice.

Swing Bed Applications:

A facility that has been designated as a CAH by the State and certified as a CAH by CMS may apply at any time to participate in the swing-bed program.

Application is made using a letter on the provider's letterhead to the state survey agency requesting approval of a swing-bed program.

Only CMS can approve an application to participate in the Medicare/Medicaid swing-bed program.

Swing Bed Definitions:

Federal Term.

"Swing-bed" is a term for the care and reimbursement for patient care services in a small rural hospital or CAH. A Swing-bed program means that post hospital skilled nursing care can be provided to the patient in the same bed with out having to move the patient to another portion of the building;

State Law - MCA 50-5-101(57).

"Swing-bed" means: a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

Swing Bed Applications:

No CAH may receive initial swing-bed approval without an onsite survey of the actual provision of such services.

State Certificate of Need requirements do not apply to swing bed services in CAH's. (The only CON requirements apply to swing bed services in excess of 5 beds in acute DRG hospitals). There are no federal requirement for a CON.

Swing Bed Requirements:

CMS certification to provide swing-bed services is a distinct and separate approval from the CMS certification to participate as a CAH.

No CAH is required to have a swing bed program.

A swing-bed program can be terminated without having any affect on the continuing operation of the provider as a CAH. Only the facility's approval to operate and receive reimbursement for swing-bed services is terminated.

Swing Bed Requirements:

- Long term care Resident Abuse reporting is required of all CAH's with swing bed services.
- The state survey agency may find an incident of abuse through an observation, a record review, or an interview with a resident or a family member.
- The survey agency will look at how the facility reports and prevents abusive behavior and what facility interventions are implemented to avoid a reoccurrence.

Swing Bed Requirements:

- When all is said and done…The Licensure Bureau issues the facility a Critical Access Hospital license indicating:
  - the number of acute care beds; (up to 25).
  - the number of beds used for swing-bed services; (thereby indicating a facility has a CMS approved swing-bed program).
  - the date of license expiration.

Swing Bed Requirements:

Federally, approved swing bed services is a recognition of a "program"…there is no "number" of swing beds associated with the CMS approval. (beyond the CAH limitation of 25 beds). As far as CMS is concerned, "If one bed swings they all swing".

The swing-beds in a CAH do not have to be separated from the acute patients although the facility may choose to do so.

The patient does not have to move to a different location in the facility when changing from acute care status to swing-bed status unless the facility requires it.

http://www.cms.hhs.gov/manuals/downloads/som107c02.pdf

Swing Bed Admission Exceptions

- Federally, there is no length of stay restriction for a swing-bed patient when they are in a CAH. There is no required discharge to a nursing home or transfer agreement.
- A Medicaid waiver is required for the admittance of a Medicaid client if there is a nursing home bed available within 25 miles of the CAH.

Medicaid Swing Bed Waiver Exceptions:

- The patient's physician can intervene on the transfer if, in their opinion, it would be detrimental to the patient's medical condition to make the transfer.
- No Medicaid transfer is required when the patients medical condition is terminal within 6 months.
- A waiver request is required within 72 hours of the transfer. This must be written into the medical record by physician.

Swing Bed Locations

A patient does not have to move to a different location in the facility when changing from acute care status to swing-bed status, unless the facility requires it.

The swing-beds in a CAH do not have to be separated from the acute patients, although again, the facility may choose to do so.

Swing Bed Requirements:

A medical order in the chart by the physician is required to change status from acute care to swing-bed…the patient is being discharged from acute care status and admitted to swing-bed status. This is necessary for reimbursement purposes… the facility is given a sub-provider number for billing swing-bed services.

For Medicare patients, a 3-day qualifying stay in any hospital or CAH is required prior to admission to a swing-bed and the admission must be for treatment of the same condition.

Who Does Them and When Are Surveys Conducted?

- The Certification and Licensure Bureau's do meet to update survey schedules monthly. This is important to try to avoid duplicate surveys.
- Licenses can be issued based upon Certification surveys.
- However, CMS Certification cannot be granted based on a Licensure Bureau survey.

Who Does Them and When are Surveys Conducted?

- If a CMS state agency survey has not been conducted within 12 months of the facility license expiration; an on-site Licensure survey is scheduled. Survey assignments are made 120 days prior to the expiration of the facility's state license.
- A provisional license may be issued to prevent a facility license expiration, pending either a certification or licensure survey.

Who Does Them and When are Surveys Conducted?

- A letter accompanies the license indicating the provisional status is to accommodate the department's survey schedule and has no bearing on the facility's licensure status.
- There are times when CMS and/or the state survey agency will conduct a survey without notifying the Licensure Bureau.

Who Does Them and When are Surveys Conducted?

- If the Licensure Bureau's survey identifies serious deficiencies, such as Fire Life Safety or EMTALA infractions, a referral is made to the state survey agency. This action may trigger a Certification Bureau validation survey thereby subjecting a facility to a duplicate survey.

When are surveys conducted?

- The two bureaus do try to avoid putting a facility through two surveys, but the regional office may choose to perform a validation survey without any consultation.

How are surveys conducted?

- Off-site survey preparation.
- Entrance interview and facility tour.
- Scheduled CAH departments survey inspection and record reviews.
- Preliminary findings.
- Exit Conference.
- Deficiency report.
- Approve facility's plan of correction.
- Recommend certification or license.

How are surveys conducted?

- Where as a Certification Bureau survey may have a team, (not in all cases), a Licensure Bureau survey is usually limited to one RN surveyor.
- The length of the survey depends upon the services and size of the CAH. Usually 2 to 3 days, may be more in a larger facility.
- Critical care units will add to the length of the survey.

How are surveys conducted?

- Surveyors will request a sampling of ER records, hospital in-patient records; and other records according to the number of Physicians and mid-level providers, and number of special units. i.e. (Critical Care, OB, Surgical, etc).
- Each CAH's services are unique, including number of visits and hospitalizations.
- Most recent records are requested; looking for patterns in current services.

Surveyors will review:

- Board Minutes, and when indicated, by-law updates;
- Credentials;
- Policies and Procedures;
- Infection control records;
- Contract updates and reviews for network compliance;
- Quality Assurance Program review.
- State surveyor will verify compliance with ARM 37.106 Chapter 300, Minimum Standards for all health care facilities.

Standard: Quality Assurance

- The standard requires the CAH to have an effective quality assurance program to evaluate the quality and appropriateness of the diagnosis and treatment furnished in the CAH and of the treatment outcomes.
- There is nothing precluding a CAH from obtaining QA by arrangement or by establishing a free standing QA program.

An Effective Quality Assurance Program…

- means a QA program that includes:
  - Ongoing monitoring and data collection;
  - Problem prevention, identification and data analysis;
  - Identification of corrective actions;
  - Implementation of ongoing corrective action;
  - Evaluation of corrective actions;
  - Measures to improve quality on a continuous basis.

Surveyors will:

- Be professional and courteous at all times through the survey process.
- Consult with the state central office as necessary.
- Conduct an exit interview, report to facility the survey's preliminary findings;
- request additional information, provide the facility an opportunity for clarification.
- issue a survey report or letter of deficiency.

Surveyors Will:

- interview patients.
- interview family members.
- review open and closed records.
- observe delivery of actual care and services.
- identify possible immediate jeopardy situations.

Surveyors Do Not:

- interfere with the ongoing delivery of services by their observation of the delivery of the actual care and services.
- make Immediate Jeopardy determinations without a central office consultation with the Certification Bureau.

CAH Surveys

- Applicable MCA, ARM, and CFRs are applied by both Licensure and Certification Bureaus.
- Facility license expirations or complaints determine Licensure Bureau surveys.
- Certification Bureau surveys are made based on complaint or a random selection as determine by the CMS regional and state survey agency.
- While both Bureau's work together to limit duplicative surveys; each facility situation and history is unique.

Certified Beds

The following bed types are included in the total facility bed count up to 25 beds:

- all designated bed locations.
- beds which a patient occupies for an extensive period of time such as in a Critical Care unit, as well as all routine inpatient beds.
- sleep lab bed will be counted.
- law enforcement/mental health seclusion rooms.
- observation beds.

Certified Beds

- "All hospital-type beds located in the CAH will be counted to establish the number of beds.. The CAH may not have more than 25 beds that **could be** used for inpatient care.
- Any hospital-type bed located in or adjacent to any location where the bed could be used for inpatient care counts toward the 25 bed limit.
- LDRPs - beds in birthing rooms where the patient remains after giving birth.

Certified Beds that do not count toward the 25 bed limit

- Stretchers;
- Operating room tables located in the operating room and used exclusively to conduct surgery on a patient;
- Beds in a surgical recovery room that are used exclusively for surgical patients during recovery from anesthesia
- Examination or procedure tables;

Certified Beds that do not count

- Beds in an obstetric delivery room that are used exclusively for observation of OB patients in active labor and delivery of newborn infants.
- Newborn bassinets and isolettes used for well baby boarders; and.
- Stretchers in emergency departments.
- Beds in Medicare certified distinct part rehabilitation or psychiatric units.

Association to attached Nursing Home Beds

- A nursing Home is also considered to be a "Distinct Part" of the Hospital.
- Hospital beds must be contiguous to each other.
- All CAH beds may be on one side of a hallway or all in one wing of the facility.

Open Discussion…

"Don't believe everything you think"…

– Anonymous

Program Conclusion…