California Hospital Association

Federal Regulatory Summary

from the California Hospital Association

CHA EXECUTIVE SUMMARY – MARCH 2024

Strengthening Oversight of Accrediting Organizations (AOs) and Preventing AO Conflict of Interest, and Related Provisions

Overview

The Centers for Medicare & Medicaid Services (CMS) issued a proposed rule intended to strengthen its oversight of accrediting organizations (AOs) such as The Joint Commission and Det Norske Veritas (DNV). While the proposed policies are applicable to AOs, several of the proposed changes will affect hospitals and health systems that rely on the AO accreditation process to demonstrate their compliance with Medicare's Conditions of Participation (CoPs) and Conditions for Coverage (CfCs).

Comments on the proposed rule are due by 2 p.m. (PT) on April 15 and can be submitted electronically via www.regulations.gov by searching CMS-3367-P.

Summary of Key Provisions

The proposed rule includes policies to increase oversight of AOs by addressing conflicts of interest; establishing standards, processes, and definitions consistent with state survey agency (SA) policies; and updating the validation and performance standards systems. The proposed rule would also revise the psychiatric hospital survey process, add a limitation on terminated deemed providers and suppliers when reentering the program, and make technical corrections for end-stage renal disease facilities and kidney transplant programs. A high-level summary of key provisions is provided below.

Proposal to add Definition of "Unannounced Survey"

Some AOs have permitted hospitals and other providers to identify a small number of black-out dates during which they could request AOs not conduct on-site surveys. In addition, some AOs have provided hospitals with a pre-arrival notification the day of an accreditation survey, usually no more than 60 minutes ahead. However, CMS believes that all AO surveys must be unannounced to prevent providers from making unusual preparations for the survey that would not represent the ongoing typical condition of the provider and true nature and quality of care provided. CMS cites examples of unusual cleaning activities, painting, clearing obstructions from halls and entrances, denying leave to staff during that time or calling staff back to inflate staffing availability, and re-reviewing medical records outside of what is normally done.

CMS notes that its longstanding policy on unannounced surveys has been within sub-regulatory guidance at section 2700A, chapter 2 of the State Operations Manual (SOM). CMS proposes to define "unannounced survey" in regulation to provide clarity on its expectations for AOs and mirror processes used by SAs, who do not announce surveys. Specifically, CMS proposes to define

"unannounced survey" as "a survey that is conducted without any prior notice of any type, through any means of communication or forums, to the facility to be surveyed, and therefore, is unexpected to the facility until the arrival onsite by surveyors. This also means that the accrediting organizations must schedule their surveys so that the facility is unable to predict when they will be performed." This proposal would prohibit the use of black-out dates and pre-arrival notifications.

Conflict of Interest

CMS proposes limitations on when and whether AOs could provide fee-based consulting services to any of the providers it accredits. Specifically, AOs would be prohibited from providing fee-based consulting services to any provider prior to its initial accreditation survey, or within 12 months of the next scheduled AO survey. The proposed rule does not prohibit providers from hiring other third-party fee-based consulting services prior to initial accreditation or subsequent surveys.

CMS also proposes to prohibit AOs from providing fee-based consulting services in response to a complaint received by the AO affecting that provider. CMS would still allow AOs to provide AO fee-based consulting services in response to complaints received by the SA regarding an AO's accredited provider or supplier. However, this fee-based consulting must be provided by the AO after completion of the SA investigation and complaint survey. CMS notes that it has always been the duty of the AOs to address and resolve complaints received regarding its accredited providers and suppliers, whether said complaint is received by the AO or the SA, as part of its paid accreditation services. CMS would not restrict AOs from providing fee-based consulting services to providers the AO does not accredit at the time consulting services are furnished.

In addition, CMS proposes to require AOs to have conflict of interest policies and to collect disclosures from employees each year. Among other requirements, AO surveyors would be prohibited from surveying any facility where they worked in the previous two years, and AOs would be required to have policies ensuring surveyors do not have any involvement with the survey process or decisions of that facility.

Proposal to Require the AOs that Accredit Medicare-Certified Providers and Suppliers to Use Medicare Conditions; and Strengthened Survey Process Comparability

AOs can deem accredited hospitals and other providers as compliant with CMS' CoPs and CfCs if the AO's standards are equivalent to or higher than CMS'. Hospitals that successfully complete accreditation from an approved AO are given "deemed status" by CMS.

To strengthen the alignment of AO standards with CMS requirements, CMS proposes to require AOs to use the specific language of the CoPs and CfCs as their minimum accreditation requirements. CMS proposes to require AOs to provide CMS with an explicit crosswalk of their standards and the Medicare CoPs.

Proposal to Revise the AO Survey Validation Program

Under current policy, CMS conducts validation surveys on a representative sample of hospitals and other providers each year. During validation surveys, SA staff and sometimes CMS surveyors conduct a full review of the organization approximately 60 days after the organization completes accreditation. While the intent of the validation process is to evaluate the performance of the AO, hospitals can receive citations during validation surveys.

In 2018, CMS also began piloting a direct observation model in which SAs accompanied the AOs on their surveys to observe and evaluate what AOs did. CMS believes there is value to both types of validation surveys in assessing AO performance. As a result, CMS proposes to make a two-pronged validation survey process permanent. That is, CMS would conduct both "look back" surveys like what it does now, along with direct observation surveys like what it piloted in 2018.

In addition, CMS proposes that hospitals or providers receiving one or more condition-level citation on either type of validation survey could lose their deemed status. Condition-level citations are considered a higher severity citation by CMS. In addition, the provider could be subject to "ongoing review by the state survey agency…until [it] demonstrates compliance." Organizations could regain their deemed status and ability to use an AO to demonstrate compliance with the CoPs once CMS finds the provider meets relevant requirements.

Proposal to Revise the Psychiatric Hospital Survey Process

Psychiatric hospitals are required to comply with both the Medicare CoPs for hospitals, as well as two special CoPs for medical record and staff requirements. The requirements for psychiatric surveyors previously resulted in a bifurcated survey process, as most psychiatric hospitals were subjected to two survey teams for each accreditation survey: the hospital survey team and the psychiatric component survey team. CMS has since made changes to the psychiatric surveyor requirements, made available comprehensive online training for all SAs, and combined the interpretive guidance at Appendix AA for psychiatric hospital surveys into the Appendix A for hospital surveys to provide a single location for all the Medicare conditions during a full psychiatric survey.

CMS proposes to integrate the acute care hospital and psychiatric hospital survey processes for SAs to ensure that there is a systematic and integrated look at psychiatric hospital quality. Therefore, AOs that currently survey only hospitals would need to expand their hospital accreditation programs to include Medicare conditions to survey for psychiatric hospitals as well.

For SAs, CMS would consolidate the deficiency report from psychiatric hospital survey activity into one Form CMS-2567, reporting on compliance with both the hospital Medicare conditions as well as the psychiatric services Medicare conditions. The survey process for inpatient psychiatric units located in acute care hospitals would not change.

Limitation on Terminated Deemed Providers/Suppliers Seeking Re-entry into Medicare/Medicaid

CMS proposes to prohibit any providers that have had their Medicare provider agreement terminated from being deemed in compliance with CoPs and CfCs through an AO. Such providers could become eligible for deemed status through AOs if CMS judges them to be compliant with relevant CoPs and CfCs.

For Additional Information

Questions about this summary should be directed to Megan Howard, vice president of federal policy, at (202) 488-3742 or mhoward@calhospital.org.