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Proposed Medicare/Medicaid Conditions of Participation for Rural Emergency Hospitals

Pursuant to the Consolidated Appropriations Act (“CAA”) of 2021 (Pub. L. 116-260), which established a new rural Medicare provider type – Rural Emergency Hospitals (“REHs”) – the Centers for Medicare & Medicaid Services (“CMS”) published a proposed rule on July 6, 2022 (the “Proposed Rule”) that would establish conditions of participation for REHs. The Proposed Rule can be found [here](#).

As established by the CAA, REHs may furnish emergency department and observation care, and other specified outpatient medical and health services that do not exceed an annual per patient average of 24 hours. Hospitals that were critical access hospitals or rural hospitals with not more than 50 beds, participating in Medicare as of December 27, 2020, may submit an application to convert to and enroll in Medicare as an REH.

Beginning January 1, 2023, an REH that provides rural emergency hospital services will receive a Medicare payment for those services that is equal to the amount of payment that would otherwise apply under the Medicare Hospital Outpatient Prospective Payment System for covered outpatient department services increased by 5%. In addition, REHs will be eligible to receive an additional monthly facility payment¹.

The proposed Conditions for Participation (“COPs”)² would require that the REH enter into a provider agreement, meet certain certification requirements and comply with applicable Federal and state laws, including licensing. Additionally, the proposed COPs would require the REH to:

1. Have a governing body and medical staff;
2. Meet certain staffing and personnel requirements;
3. Have written policies that comply with applicable law;
4. Provide emergency services, laboratory services, radiologic services, and pharmaceutical services that meet the needs of its patients and community, each with certain personnel, facility and policy requirements;
5. Maintain an infection prevention/antibiotic stewardship program;
6. Be staffed 24 hours a day, 7 days a week;
7. Provide nursing services 24 hours a day;
8. Provide discharge planning services;

¹ CMS will develop the payment policies for REHs via separate notice and comment rulemaking.

² The proposed COPs for REHs would be located at 42 C.F.R. § 485.500, *et seq.*

9. Adhere to certain patient rights;
10. Implement a Quality Assessment and Performance Improvement Program (QAPI Program);
11. Have transfer agreements in effect with a Medicare-certified Level I or II trauma center;
12. Comply with certain medical records requirements;
13. Have in place emergency preparedness programs and comply with certain requirements related to emergency preparedness; and
14. Meet certain requirements for the physical environment, including compliance with the 2012 edition of the Life Safety Code.

If the REH chooses to provide outpatient services, those may include, but are not limited to, radiology, laboratory, outpatient rehabilitation, maternal health, surgical, and behavioral health services. In each case, the REH must demonstrate that the service is needed based on a community assessment.

Notably, to address barriers faced by many rural facilities, the Proposed Rule indicates that telemedicine opportunities may be available for REHs as an originating site.

The REH may elect to establish a distinct part licensed skilled nursing facility unit to furnish post-REH or post-hospital extended care services. REHs that choose to establish such a distinct part unit would be required to meet the requirements for long-term care facilities at 42 CFR part 483, subpart B.

Each of the above elements, as proposed, includes additional more specific requirements which would be codified through regulation and are available to view in their entirety at [87 Fed. Reg. 40350, 40388](#). Interested parties may submit comments to CMS by August 29, 2022.

As with all of our Client Resources, if you have questions about the above, please reach out to your Kutak Rock attorney or a member of the firm's [National Healthcare Group](#).

