



Critical Access Hospital (CAH) Revised Relocation Guidance and Jan. 1, 2008, Rule Changes

Centers for Medicare & Medicaid Services (CMS) Region X

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CAH Relocation Background

- **Original 1997 CAH legislation & regulation:** relocations were not addressed.
- **Presumption:** any CAH which met federal requirements for location relative to other CAHs/hospitals (i.e., located 35+ miles, or 15+ miles in certain terrain, from the nearest other hospital/CAH) could relocate IF it continued to meet all CAH requirements in new site (including distance requirements).
- **Issue:** what about “necessary provider” (NP) CAHs?



Background on Necessary Provider (NP) CAHs

- Until 01/01/06, when the NP provision “sunset” (per the 2003 MMA), a State could designate a facility as a NP of health care to residents in the geographic area, based on State developed NP criteria specified in the State Rural Health (RH) Plan.
- In this event, the federal mileage requirements for location relative to other CAHs/hospitals were not applied & the NP facility could become a CAH.
- While the NP provision has sunset, the law (MMA of 2003) provides CAHs certified as such based on a State NP designation received on or before 12/31/05 are “grandfathered” in the program.



Quick Background Region 10 CAH Relocations

- Several years ago, a NP CAH informed CMS that it wished to relocate & rebuild:
 - The proposed new CAH location was several miles away from its rural community & closer to the service area of a larger, urban hospital, which objected to the proposed move;
 - The proposed move generated controversy locally and, ultimately, nationally; and
 - The MMA of 12/08/03 provided for the sunset of the State NP provision effective 01/01/06 but also provided for “grandfathering” of existing NP CAHs.
- An important question for CMS was:
 - In the proposed new location, would this facility continue to meet the State NP criteria & also serve the same area as when it was certified?
 - The State said yes, it would meet State NP criteria in the new location.
 - The facility said yes, in its new location it would continue to serve the same area.



Growing National Concerns re CAH Relocations

- Interest & controversy concerning relocation of NP CAHs continued to grow during 2003-2005.
- Many CAHs needed to repair or replace aged buildings & found they could not always do so on the existing campus.
- Ultimately CMS determined it must deal with relocations of CAH NPs via rulemaking.



Issuance of NP CAH Relocation Final Rule

- CMS addressed relocations of NP CAHs through rulemaking, in a final rule published in the Federal Register (FR) on 08/12/05 & located at 42 CFR 485.610(d).
- A NP CAH may relocate, PROVIDED in the new location it:
 - Serves at least 75% of the same service area as it served prior to the relocation;
 - Provides at least 75% of the same services as it furnished prior to the relocation; and
 - Staffs with at least 75% of the same staff (i.e., medical, contracted & employed) as utilized prior to the relocation.



Initial Interpretive Guidance on CAH Relocations

- On 11/14/05, CMS followed up on the final CAH relocation rule (08/12/05) by issuing interpretive guidance via national Survey & Certification (S&C) Letter #06-04.
- Key features of S&C Letter #06-04 were that it:
 - Applied three 75% criteria to ALL CAHs;
 - Revised & strengthened the definition of “secondary road”;
 - Furnished a definition of “mountainous terrain”;
 - Required a NP CAH in its new location to meet the same State NP designation criteria as in its original location; and
 - Required a relocating CAH submit to its CMS Regional Office (RO) two relocation attestation letters:
 - An initial, pre-relocation attestation letter with supporting documentation; and
 - A second, post-relocation attestation letter.



Provider Concerns re Initial CAH Relocation Interpretive Guidance

- CAHs, State Hospital Associations, & the American Hospital Association (AHA) expressed a variety of concerns regarding policies in national S&C Letter #06-04 (11/14/05).
- CMS agreed to review the guidance in S&C Letter #06-04 and consider making some policy revisions.
- On 09/07/07, CMS issued revised national interpretive guidance in *NEW* S&C Letter #07-35, which supersedes the prior S&C Letter (#06-04).



Revised Interpretive Guidance CAH Relocations & Relative Location

– The ***NEW*** national S&C Letter #07-35 of 09/07/07:

- Revises & replaces prior guidance;
- For NP CAHs, addresses relocations (see 42 CFR 485.610(d));
- For non-NP CAHs, clarifies location relative to other hospitals/CAHs (see 42 CFR 485.610(c)); and
- Remains accessible at:
<http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter07-35.pdf>



Key Features of Revised CAH Interpretive Guidance

- Some key features of *NEW* national S&C Letter #07-35 (09/07/07) are:
 - As described in this Letter, the CAH relocation rule at 42 CFR 485.610(d) applies ONLY to relocations by *NP CAHs*;
 - The relocation process described in this Letter is triggered if as a result of its construction, renovation, remodeling, and/or rebuilding the NP CAH will be moving/relocating ANY of its up to 25 CAH beds (i.e., even if such a bed move is to occur *on campus*); and
 - This (above) is based on the relocation regulation, which requires CMS treat as relocated facilities all “newly constructed NP facilities” (see 42 CFR 485.610(d) and discussion at 70 FR 47472).



Steps for Relocating NP CAHs

PRIOR TO COMMENCING RELOCATION

- Per the revised guidance, *well before* commencing a relocation effort (i.e., which entails movement of ANY of its up to 25 CAH beds), the NP CAH must submit to the Manager of its CMS Regional Office (RO) Survey, Certification, & Enforcement (SCE) Branch an *initial, pre-relocation attestation letter* which:
 - Includes a copy of the CAH's original NP determination from the Office of Rural Health (RH) (i.e., on or before 12/31/05) ;
 - State Office of RH documentation that in the new location the facility will meet the same NP criteria as when State designated as such (i.e., on or before 12/31/05);
 - Identifies the current & proposed addresses;
 - Attests that in the new location it will meet the three 75% criteria in the regulations at 42 CFR 485.610(d) (i.e., for service area, services furnished, & staff utilized);
 - Encloses baseline documentation addressing the above three 75% criteria (i.e., to be used by the RO post-relocation in establishing compliance with these criteria);
 - Documents how the new facility/location meets the rural location (or treatment) requirement at 42 CFR 485.610(b); and
 - Provides a timetable for the relocation.



....Steps for Relocating NP CAHs

- Upon receipt & review of the initial, pre-relocation attestation letter & documentation, the RO issues to the CAH a preliminary relocation approval determination.
- It is important to note:
 - CMS recognizes that some percentage changes may result from normal NP CAH operations over time (e.g., staff turnover) and not the relocation.
 - Such CAH changes (above) should be documented & explained, so that they can be factored into the final relocation determination by the RO (i.e., post-relocation).



.....Steps for Relocating NP CAHs

RELOCATION IMPLEMENTATION PHASE

- During its relocation construction & implementation phase, the NP CAH must:**
 - Notify the RO of any changes to the information submitted with its initial relocation attestation letter; and**
 - Work appropriately & closely with the State Survey/Licensure Agency (SA) and, as necessary, local authorities.**



.....Steps for Relocating NP CAHs

POST-RELOCATION

- Post relocation (e.g., 6-12 months), the NP CAH must submit to its RO a second, post-relocation attestation letter, which encloses current documentation addressing the three 75% criteria for relocation (i.e., for service area, services furnished, & staff utilized).
- Upon receipt & review of the second, post-relocation attestation letter, the RO makes a final relocation determination:
 - If the facility meets the three 75% criteria in its new location, the RO determines that it is the same NP CAH as in the original location and that it may be grandfathered as such under the same Medicare provider agreement.
 - Should a facility fail to meet the three 75% criteria in its new location, the relocation must be treated as a cessation of business, per 42 CFR 489.52(b)((3).



Steps for Relocating *Non-NP CAHs*

- In contrast, a *non-NP CAH* which wishes to relocate must:
 - Notify, & work appropriately & closely with, the applicable SA and, as necessary, local authorities:
 - The SA works closely with the RO in assessing provider compliance with all Medicare requirements & will make to the RO a related certification recommendation; and
 - Update appropriately with its Medicare fiscal intermediary (FI) or Medicare administrative contractor (MAC) its CMS 855A enrollment application (i.e., to change its address):
 - The FI or MAC will review & validate the CMS 855A update and make a related approval recommendation to the RO, via the SA.



Changes to Note in Revised Interpretive Guidance

- **NP CAHs**
 - For relocating NP CAHs, guidance is less prescriptive with respect to the types of documentation which can be used to demonstrate compliance with three 75% criteria in the new location.
 - Note that relocating NP CAHs may lessen documentation when circumstances of relocation are simple, as in building adjacent to the current facility.
- **Non-NP CAHs**
 - For non-NP CAHs, the definition of “mountainous terrain” is more flexible than in prior guidance of 11/14/05.
 - For non-NP CAHs, the definition of “secondary road” has been clarified & is less stringent than in the prior guidance.



Questions on CAH Relocations?

For clarification concerning circumstances & any necessary steps to take, contact:

CMS RO

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Alma Hardy, External Affairs Liaison/RO RH Coordinator
alma.hardy@cms.hhs.gov
(206) 615-2387

State Office of Rural Health

Mike Lee, CAH Program Manager
Office of Community & Rural Health, DOH
mike.lee@doh.wa.gov
(360) 236-2807



CAH Rule Changes Effective 1/1/08

- Final rule published in FR on 11/27/07 and located at 42 CFR 485.610(e) addresses:
 - Co-locations of NP CAHs with other hospitals or CAHs on & after 01/01/08; and
 - Provider-based designations for *off-campus* entities of any CAH (i.e., non-rural health clinic (RHC) entities) on & after 01/01/08.



Co-locations of NP CAHs

- **Co-locations of NP CAHs:**
 - No *new* co-location arrangements involving NP CAHs are permitted on & after 01/01/08.
 - Co-location arrangements existing prior to 01/01/08, however, will be grandfathered on & after that date.
 - On & after 01/01/08, any new co-location arrangement by a NP CAH will trigger a termination action (i.e., 90-days, with opportunity for correction).

NOTE: Only *NP CAHs* could be co-located (i.e., sharing space) with another hospital or CAH. Outside this Region, there are some NP CAHs which share space with a specialty hospital (e.g., usually a psychiatric or rehab hospital).



Provider-based Designations for CAH *Off Campus* Entities

- Provider-based designations for *off campus* CAH entities (i.e., non-RHC entities):
 - On & after 01/01/08, such an entity must meet the CAH requirement for location relative to other hospitals/CAHs at 42 CFR 485.610(c) (i.e., must be located 35+ miles, or 15 + miles in some terrain, from nearest other hospital/CAH facility).
 - On & after 01/01/08, acquiring or establishing and operating as provider-based an off-campus entity which does not meet the above CAH location requirement (i.e., and which was NOT in development prior to 01/01/08) will trigger a termination action (i.e., 90-days, with opportunity for correction).
 - Off-campus provider-based entities which exist prior to 01/01/08 & which do not meet this CAH location requirement, however, will be grandfathered in the program. #20



Off Campus Provider-based Entity *In Development*

Pre-1/1/08

IMPORTANT NOTE

- If PRIOR to 01/01/08 a CAH has undertaken significant planning and/or construction efforts for an off-campus provider-based entity which does NOT meet the CAH location requirement & these efforts will not be completed by that date, based on a review by the RO of supporting documentation submitted by the CAH, after 01/01/08 the efforts may be continued & the provider-based designation ultimately may be approved (see Preamble to 11/27/07 FR, pp. 66879-66880).
- For examples of documentation which can be used by the CAH to support such an entity was *in development* prior to 01/01/08, please refer to documentation guidelines for determining whether a specialty hospital was “under development” & should be grandfathered in the program in online Publication 100-20 (One Time Notification transmittals) at:

<http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=1&sortOrder=ascending&itemID=CMS020095&intNumPages=10>

Examples *In Development* Pre-1/1/08

- That planning and/or construction was in development prior to 01/01/08 could include documentation to confirm:
 - Architectural specifications were drafted;
 - Construction bids were let;
 - Land and building supplies were purchased;
 - Efforts were made to secure financing for construction;
 - Funds were expended for construction; and
 - There is compliance with State requirements for construction, such as zoning requirements, certificate of need application, & architectural review.

NOTE: ROs reasonably are expected to consider all of the factors involved in each such instance.



On Campus

Any CAH may add a provider-based entity on campus, provided the entity:

- Is owned & operated by the CAH;
- Meets applicable requirements in the CAH Conditions of Participation (CoPs);
- If applicable, meets the rehabilitation and/or psychiatric distinct part unit (DPU) requirements; and
- Satisfies applicable provider-based requirements in 42 CFR 413.65.

Off Campus

Any CAH may add a provider-based entity off campus, provided the entity:

- Is owned & operated by the CAH;
- Meets applicable requirements in the CAH CoPs, INCLUDING the CAH requirement at 42 CFR 485.610(c) for location relative to other hospital/CAH facilities (see *NEW* 42 CFR 485.610(e)(2)-(3));
- If applicable, meets the rehabilitation and/or psychiatric DPU requirements; and
- Satisfies applicable provider-based requirements in 42 CFR 413.65. #23



Recommended Steps Provider-based Designations

(Non-RHC, post-1/1/08)

CAH Step #1

- A) CAH works with SA and/or RO, as appropriate, to determine whether proposed entity site meets CAH rural location & federal mileage requirements; and
- B) If above requirements met, CAH adds entity to State hospital license via SA.

CAH Step #2

- A) As appropriate, CAH completes & submits to its fiscal intermediary (FI) or MAC a provider-based self-attestation, along with supporting documentation :
 - The FI or MAC reviews & makes approval recommendation to RO Medicare Division of Financial Management (FM) & Fee-for-Service (FFS) Operations.
- B) As appropriate, CAH concurrently updates with its FI or MAC its CMS 855A enrollment application (e,g, if entity will provide new services, entity will have a new/different address; and/or there is a management change), under cover of a letter noting provider-based designation is sought:
 - The FI or MAC reviews & validates the CMS 855A, and makes an approval recommendation via the SA, with copy to RO SCE Branch; and
 - The SA makes a certification approval recommendation to the RO SCE Branch.



.....Recommended Steps Provider-based Designations *(Non-RHC, post-1/1/08)*

RO Step #3

In the RO, the SCE Branch & Medicare Division of FM & FFS Operations coordinate review results and, if results support designation, collaborate in issuing an approval letter to the CAH & provider “tie-in” notice to the FI or MAC.



Questions re *In Development* Prior to 1/1/08?

- For assistance from CMS, please contact either of the following Survey, Certification, & Enforcement (SCE) specialists:

Jeri McClain
jerilyn.mcclain@cms.hhs.gov
(206) 615-2316

Catherine (Kate) Mitchell
catherine.mitchell@cms.hhs.gov
(206) 615-2432

- A letter enclosing documentation to confirm that an off-campus entity was in development prior to 01/01/08 may be addressed to:

**Christopher Martin, Manager
Survey & Certification Branch
Western Consortium Division of Survey & Certification
Centers for Medicare & Medicaid Services (CMS)
Mailstop RX-48
2201 Sixth Ave.
Seattle, Washington 98121-2500**

(NOTE: Also use above address for Relocation Attestation Letters.)



Resources

- **CAH NP Relocations**
 - **42 CFR 485.610(d)**
 - **State Operations Manual (SOM) Chapter 2 – The Certification Process, Sections 2255B & 2256F** at:
<http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=1&sortOrder=ascending&itemID=CMS1201984&intNumPerPage=10>
 - **S&C Letter #07-35, dated 09/07/07, at:**
<http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter07-35.pdf>
- **Co-locations of NP CAHs**
 - **42 CFR 485.610(e)(1), (3) - NEW**
- **Provider-based Designations**
 - **42 CFR 485.610(e)(2), (3) - NEW**
 - **42 CFR 413.65**
 - **CMS Program Memorandum A-03-030 (Change Request #2411 dd. 04/14/03) – “Provider-based Status On and After 10/01/02,” at:**
<http://www.cms.hhs.gov/Transmittals/CMSPM/itemdetail.asp?filterType=dual,%20keyword&filterValue=2411&filterByDID=0&sortByDID=4&sortOrder=ascending&itemID=CMS053068&intNumPerPage=10>



THANK YOU

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