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At Long Last, CMS Issues Proposed Guidance on Hospital Co-Locations

May 7, 2019 – Dorsey Health Law
by Alissa Smith

For years, CMS has informally applied restrictions for hospitals which share space, equipment, staff or services in the same physical location (i.e., "co-locate") with other hospitals or health care entities. Although these sub-regulatory interpretations by CMS were not formal guidance, the penalties were so severe that many hospitals unwound the co-location or shared services arrangements they had in place with physician groups or other health care providers. The American Hospital Association and others have urged CMS to develop and publish its co-location policy in order to provide clarity for hospitals-in particular out of concern for increasing access to care and improving care coordination in rural parts of the country.

On May 3, 2019, CMS finally issued draft guidance to State Survey Agency Directors to use when evaluating hospital co-location arrangements. CMS is seeking comments from stakeholders on the draft guidance by no later than July 2, 2019.

In the draft guidance, CMS emphasizes that co-location of public areas and pathways is permitted as long as each entity demonstrates separate, independent compliance with the Medicare Conditions of Participation. For a hospital, this means that the hospital must have distinct spaces (including clinical spaces) and maintain control over those spaces at all times. The parties to the co-location arrangement can share public lobbies, waiting rooms, reception areas, restrooms, staff lounges, elevators, main entrances to a building, and main corridors through non-clinical spaces. CMS has, however, outlined restrictions regarding the sharing of physical space, contractual arrangements with entities that are co-located with

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a hospital, the sharing of staffing and staff contracts, and the provision of emergency services in spaces that are co-located with hospitals.

We are monitoring the developments of this draft guidance closely and will provide updates as they are published from CMS.

If you have any questions about how the draft co-location guidance could impact your organization, please contact the author or your regular Dorsey & Whitney attorney.