

Insights

CMS Moves Closer to Clarifying Hospital Co-Location Rules with Draft Guidance

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The Centers for Medicare and Medicaid Services ("CMS") is seeking public comment on draft guidance regarding hospital co-location with other hospitals or healthcare facilities. The draft guidance, published on May 3, 2019, is CMS's long awaited attempt to clarify shared space and shared staff arrangements. CMS's public comment period closes on July 2, 2019.

The draft guidance outlines requirements for shared space arrangements and provides new survey procedures for state surveyors monitoring hospitals for compliance. Key takeaways from the draft guidance are as follows:

- **Independent compliance.** Each entity sharing the same campus or location is responsible for separate and independent compliance with the conditions of participation.
- **Distinct Space.** Hospitals cannot commingle clinic space, but may share public spaces (hallways, lobbies, restrooms, elevators, or waiting rooms) so long as those spaces do not jeopardize the clinic space or patient privacy.
- **Staff.** Hospital staff and nurses can be shared between entities pursuant to an "under arrangement" relationship, but they cannot "float" between those entities during a shift. The governing body approved medical staff may float between entities if they are properly credentialed and privileged at each hospital.
- **Emergency Services.** A hospital may contract with another entity to provide emergency services, provided such staff are not also working simultaneously at another location. A hospital cannot rely on a co-located hospital to respond to its emergencies, but may arrange for the transfer of a patient to another hospital when it cannot



provide care beyond the initial emergency treatment.

Note, the May 3, 2019 guidance is *draft* guidance, and will only be finalized by CMS after the public comment period closes. Co-location issues are becoming increasingly common as health care entities consolidate and innovate health care delivery systems and the guidance, once finalized, will help clarify the requirements for co-location. Contact Brandon W. Shirley or Meghan M. Linvill McNab with any questions, or if you need assistance responding to a state survey of your hospital location.