

Critical Access Hospitals & Compliance Programs

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History and Background

- Critical Access Hospitals (“CAH”) were established by the Balanced Budget Act of 1997
 - Part of the “Rural Hospital Flexibility Program”
- Limited service hospitals
 - Rural/isolated hospitals
 - 15 acute care beds (10 additional beds if certified as swing beds)
 - Individual patient stays of no more than 96 hours

History and Background

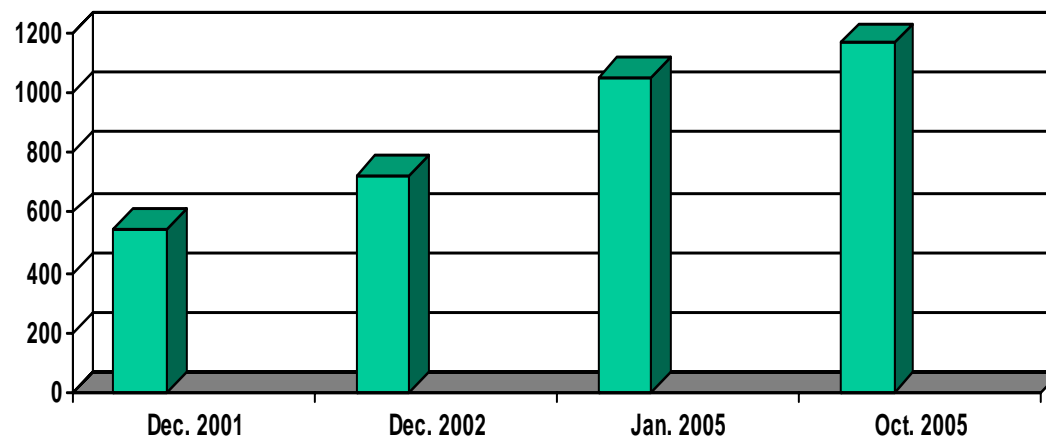
- The CAH Program was expanded by the Balanced Budget Refinement Act of 1999
 - Changed the individual patient 96 hour LOS requirement to an average annual LOS of 96 hours
 - Allowed for-profit hospitals to participate in the program
- By the end of 2001 there were 545 hospitals in 43 states participating in the CAH program
 - Approximately 1 of every 9 non-federal short stay hospitals in the Medicare Program

History and Background

- Major Expansion of CAH program was adopted in the Medicare, Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”)
 - Expanded the number of allowable acute care beds from 15 to 25
 - Enhanced reimbursement opportunities
 - Allowed for the establishment of distinct part units for Rehab and Psych services

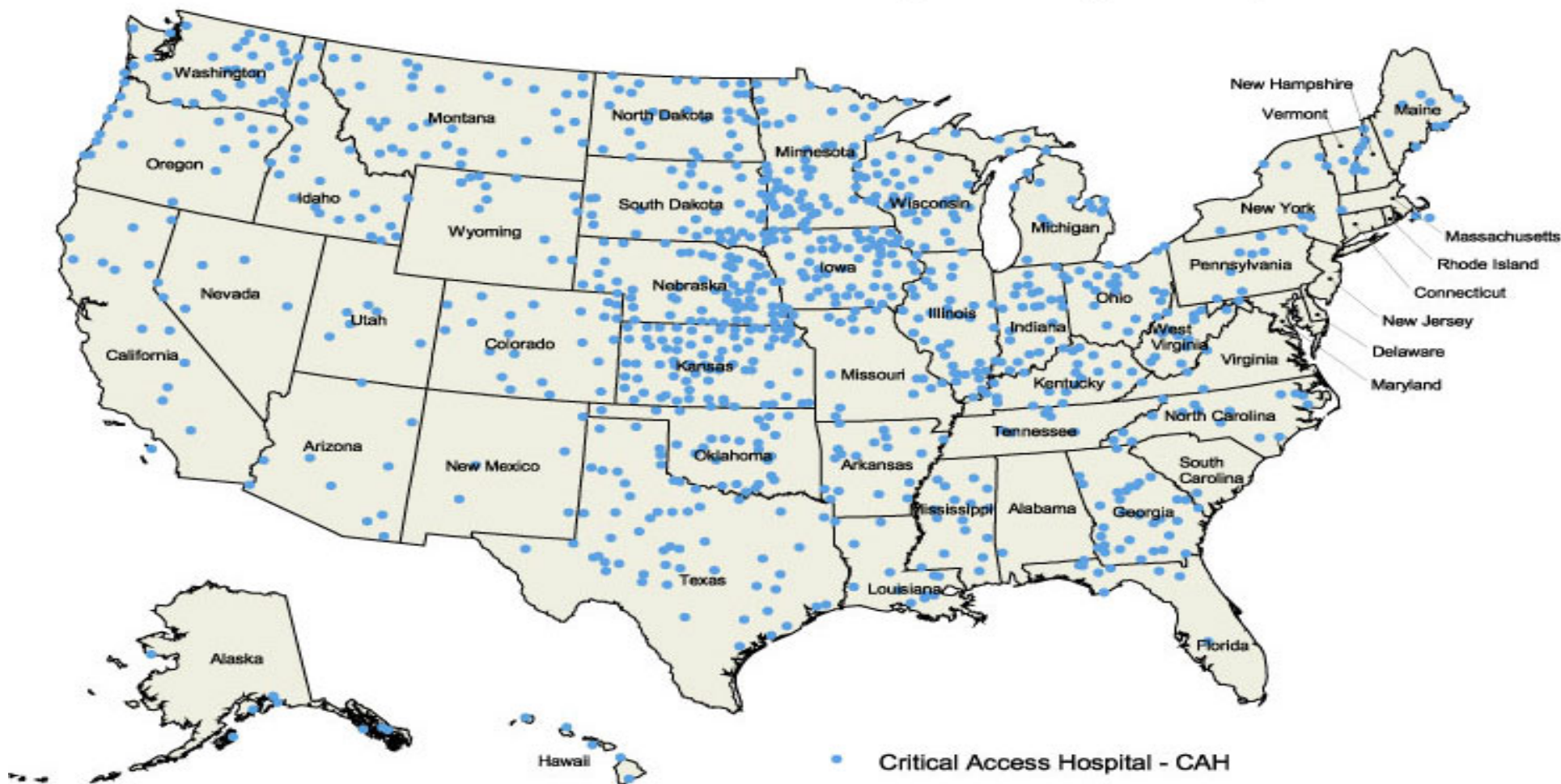
CAH Expansion

- Two years after the MMA:
 - 1,165 CAHs as of October 2005 (twice as many as in 2001)
 - Slowdown in expansion likely due to MMA's ending of states "necessary provider" designation authority as of January 1, 2006



CAH Locations

Critical Access Hospitals (CAH)



Source: Centers for Medicare & Medicaid Services - CMS (POS, 2004)

Note: Alaska and Hawaii are not to scale.

- There are several unique reimbursement aspects of CAHs
- Cost-based reimbursement principles apply
 - 42 C.F.R. 413.9 defines “reasonable costs”
 - All “necessary and proper” costs incurred in furnishing Medicare covered services
 - Providers must maintain “adequate cost data” based upon financial and statistical records capable of verification by auditors

CAH Reimbursement

- Inpatient services:
 - 101% of reasonable costs
 - Pass-through payment for reasonable costs of anesthesia services provided by CRNAs
 - Aside: CMS position is that CRNA pass-through payment is not available for CAHs in non-rural MSAs that are treated as rural pursuant to Section 1886(d)(8)(E) of the Social Security Act
 - Rehab and Psych units are paid based upon the applicable PPS if all standards met

- Outpatient services – Two methods of Reimbursement:
 - (1) 101% of reasonable costs for facility services and no payment to the CAH for professional services
 - (2) 101% of reasonable costs for facility services and 115% of fee schedule amount for professional services
 - Election of Method 2 reimbursement required in writing to the fiscal intermediary within 30 days of cost reporting period
 - Physicians or other practitioners must execute a reassignment to the CAH as a condition for Method 2 reimbursement

- Emergency Room & On-Call Providers:
 - Reasonable compensation and related costs of ER physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are:
 - On-call at the CAH;
 - Not on-call elsewhere; and
 - Not otherwise performing professional services.
 - Written contracts must be maintained with the practitioners requiring them to come to the CAH when their presence is medically required

CAH Reimbursement

- Laboratory Services:
 - 101% of reasonable costs for outpatient lab tests only if the patient is an actual outpatient of the CAH and is physically present in the CAH at the time the specimens are collected
 - Otherwise, the clinical lab fee schedule payment is made

CAH Compliance Programs

- CAHs are unique to the Medicare program
- Specific compliance program guidance from the OIG has not been issued for CAHs
- Work to establish a program that meets needs of the CAH

Compliance Programs

- What is a compliance program?
 - As defined in the Federal Sentencing Guidelines, a “corporate compliance program” is an “effective program to prevent and detect violations of law”
- Why should a CAH have a corporate compliance program?
 - Compliance programs offer advantages in preventing or reducing potential liability and/or sanctions to an entity

Compliance Programs

- Specifically, corporate compliance programs may:
 - Reduce criminal and/or civil fines
 - Minimize the risk of corporate probation
 - Minimize the risk of *qui tam* actions against the company
 - Establish a structure to quickly disseminate legal and policy changes to the organization's employees
 - Establish a “renegade employee” defense
 - Provide upper-management comfort that the organization is in compliance with the law
 - Minimize the risks of exclusion from the Medicare and Medicaid Programs

Elements of a Compliance Program

The Guidelines provide that an “effective plan to prevent and detect violations of law” means a program that has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal conduct.

The hallmark of an effective program to prevent and detect violations of law is that the organization exercises due diligence in seeking to prevent and detect criminal conduct and otherwise promotes an organizational culture that encourages ethical conduct and compliance with the law

Elements of a Compliance Program

Due diligence requires at a minimum that the organization take the following steps:

1. The organization must establish compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct (e.g., standards and procedures relating to billing and coding).
2. Specific individual(s) within high-level personnel of the organization must be assigned overall responsibility to oversee development and compliance with such standards and procedures (e.g., appoint a Compliance officer).

Elements of a Compliance Program

3. The organization must use due care not to delegate substantial discretionary authority to individuals whom the organization knows or should have known through the exercise of due diligence had a propensity to engage in illegal actions.
4. The organization must take steps to communicate effectively its standards and procedures to all employees and other agents (e.g., by requiring participation in training programs or by disseminating publications that explain what is required in a practical manner).

Elements of a Compliance Program

5. The organization must take reasonable steps to achieve compliance with its standards (e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents may report criminal conduct by others within the organization without fear of retribution).
6. The standards must be consistently enforced through appropriate disciplinary mechanisms, including discipline of individuals responsible for the failure to detect an offense.

Elements of a Compliance Program

7. After an offense is detected, the organization must take all reasonable steps to respond appropriately to the offense, and to prevent further similar offenses, including any necessary modifications to its program to prevent and detect violations of law.

Pitfalls of Developing a Compliance Program

Even if a Compliance Program is in place, the following can negate the Program's effectiveness:

- Failure to incorporate and follow any applicable governmental regulation
- Commission of an offense by high-level personnel or an individual responsible for the administration or enforcement of the compliance plan

Pitfalls of Developing a Compliance Program

- If, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate Governmental authorities
- Failure to follow a Compliance Program in place is worse than not having a Compliance Program!

What can a CAH do to protect against allegations of misconduct?

- CAHs should work to develop compliance programs tailored to their unique circumstances and limited resources
 - Policies & Procedures
 - Personnel
- Some additional focus areas:
 - Ineligible persons
 - Training and education
 - Auditing and monitoring
 - Responding to perceived misconduct

Ineligible Persons

Do not hire or contract with excluded individuals or entities

- Payment restrictions
- Sanctions, civil monetary penalties
- Reinstatement is NOT automatic

Ineligible Persons

- Check the databases
 - LEIE (OIG)
 - EPLS (GSA)
- Document the verification
- Ask the individual or entity

Training & Education

- Compliance training
- Specific training (e.g. billing & coding)
- Training method
- Frequency and duration
- Attendance
- Qualified instructors
- Training material
- Documentation

Training & Education

- Did you really hear that?
- Document external advice and sources (e.g. fiscal intermediary communications)

Auditing & Monitoring

- Workable, meaningful audit
- Qualified individuals
- Frequency
- Subject matter
- Proactive and reactive
- Educate participants
- Follow through
- Monitor documentation
- Reporting results
- Attorney-client privilege

Auditing & Monitoring

- On-site review
- Employee evaluation and interviews
- Disclosure program
- Exit interviews

OIG Work Plan for 2006

“We will review hospital cost reports to examine the administrative and other costs incurred by critical access hospitals from inpatient and outpatient services for time periods both prior and subsequent to their conversion to critical access hospital status...”

Responding to Perceived Misconduct

- Get the facts
- Understand the people involved
- Involve the appropriate people
- Take action without unnecessary delay
- Do not dismiss any complaint
- Document response

CAH Compliance Programs

- The key to successful compliance programs is to take action and follow through
- Questions or additional information:

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