

Report on Medicare Compliance Volume 27, Number 34. October 01, 2018 CMS Proposes To Drop Some H&Ps, But State Laws May Require Them

By Nina Youngstrom

It won't do hospitals in Kansas and perhaps elsewhere any good if CMS frees them from histories and physicals (H and Ps)—as proposed in its Sept. 20 regulation to reduce regulatory burdens before certain outpatient surgeries—because state law there requires them. CMS proposed to let hospitals use “pre-surgery/pre-procedure assessments” instead and made a similar change for ambulatory surgery centers (ASCs). But state licensing laws often mirror Medicare conditions of participation (CoP) or conditions for coverage, and if that's the case, it may take both CMS and the state legislature to untie hospitals' hands, an attorney says.

The licensing laws for hospitals and ASCs in Kansas oblige them to provide H and Ps 30 days before surgery, “and I imagine a lot of states would be in a similar position,” says Richelle Marting, an attorney with the Forbes Law Group in Overland Park, Kansas. If CMS's proposed regulation is finalized, the state law would be more stringent, and “if state law is more stringent, you follow state law.”

The H and P provision is one of many in a sweeping proposal that would modify the CoPs—as distinguished from the conditions of payment—for hospitals, ASCs, home health agencies, hospices and other entities and would save providers \$1.12 billion a year, according to CMS. “This proposed rule would reform Medicare regulations that are identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers,” according to CMS.

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