TEXAS ORTHOPAEDIC ASSOCIATION
Established 1936

Medicare's Hospital Survey Memo: The Need for More Flexibility

On September 6, 2017, the Centers for Medicare and Medicaid Services (CMS) issued guidance to hospital surveyors regarding what constitutes a hospital that is "primarily engaged" in the provision of inpatient services. The 2017 memo changed the definition to require that:

- The hospital maintains an average daily census (ADC) of two inpatients.
- The hospital has an average length of stay (ALOS) of two or more days.

Prior to the 2017 memo, the factor that defined a hospital was driven by the ratio of inpatient to outpatient beds, and CMS had been using that definition since 2008.

Both Medicare and physicians strive to discharge patients from hospitals as soon as they are ready to leave. Overwhelming evidence finds that reducing the length of stay in hospital improves outcomes.

An increasing number of cases have appropriately shifted to outpatient settings, such as ambulatory surgery centers. CMS has recognized this evolution by encouraging the outpatient concept through recent policy actions. However, many services, in particular for Medicare beneficiaries, still require the higher level of capabilities offered by hospitals.

For those cases that continue to be more appropriate for the hospital setting, physicians have made great strides to reduce the length of stay required for many services. As a result, the average length of stay for many hospitals has been greatly decreased over the years. The utilization of less invasive techniques is an example of a factor that has led to this change.

Unfortunately, CMS's September 2017 hospital survey guidance memo penalizes hospitals for enhancing care by decreasing patient length of stays. If CMS takes away the Medicare certification from these hospitals, where are the patients who need the hospital-level care going to have their surgeries?

A number of Texas hospitals that specialize in orthopaedic surgery could be affected by this policy.

Ultimately, we strongly encourage CMS to issue new guidance that would allow hospitals to have more flexibility related to average length of stay and average daily census. The flexibility would allow hospitals to adapt their care models to be in line with other CMS actions, such as shifting some inpatient procedures to outpatient.

Several members of the Texas Congressional Delegation – including Louie Gohmert, Vicente Gonzalez, John Ratcliffe, Pete Sessions, Brian Babin, and Pete Olson – asked CMS in a May 16, 2018 letter to re-think this policy and allow for more flexibility.