TEXAS DEPARTMENT OF STATE HEALTH SERVICES

1100 W. 49th Street • Austin, Texas 78756
DAVID L. LAKEY, M.D. 1-888-963-7111 • http://www.dshs.state.tx.us
COMMISSIONER TDD: 512-458-7708

To: Texas Hospitals
From: Texas Department of State Health Services
Date: March 27, 2007

The Texas Department of State Health Services (DSHS) has worked closely with the Texas Hospital Association and the Texas Organization for Rural and Community Hospitals to develop this information to address stakeholder questions regarding "outpatient facilities" in Texas. DSHS survey staff will be receiving this information as well, with the goals of educating staff and stakeholders and achieving consistent surveys across the state regarding this complex but important issue.

Outpatient Facilities

Question – Can licensed/certified hospitals operate outpatient facilities?

Answer – Yes – as either (1) part of the hospital's licensed premises, or (2) by a provider-based determination under federal CMS rules or (3) as a separate service provided by the hospital not under the license.

Texas

Question – Are hospital outpatient facilities part of the hospital's license?

Answer - In Texas, Health and Safety Code § 241.023 http://tlo2.tlc.state.tx.us/statutes/hs.toc.htm governs outpatient facilities. Texas law does not allow an outpatient facility to be included under the hospital's license unless it is part of the "premises" of the hospital. That law provides that the department may issue a license *only* for the premises of a hospital. "Off-site" is interpreted as being off the premises. The only outpatient facilities that are considered to be part of the hospital's licensed premises are those that meet the requirements of §241.023.

Question – Can a hospital provide services in locations that are not on the premises of the hospital?

Answer – Hospitals can provide services in other buildings that do not meet §241.023 requirements, but these services are not part of the hospital's licensed premises.

Question – What are the requirements for inclusion of a location in a hospital's licensed premises?

Answer – Any qualifying location operated by the hospital can be part of the hospital's licensed premises if it meets the requirements of §241.023 and if the hospital notifies DSHS as to the scope of the premises the license covers.

Question – Can a hospital provide inpatient services at a location that is not included in the hospital's licensed premises? If so, how?

Answer – Under the hospital license, a hospital may provide **inpatient** services **including** diagnostic and /or lab services, physical therapy, occupational therapy, cancer treatment, rehabilitation services, and similar treatments or therapies at an **offsite** location provided the hospital has policies in place for the safe care of the inpatient while receiving the treatment or therapy, and for the safe transport of inpatients to and from the offsite location.

Question - Can a hospital provide outpatient services at a location that is not included in the hospital's licensed premises?

Answer – yes.

If so, how?

Answer – 1) seek provider based status from CMS or
2) obtain a license in the case of services that require a separate state license {i.e. Ambulatory Surgery Center (ASC), Dialysis (ESRD) facility}

Question – But if an offsite facility is not part of the hospital's licensed premises, how can the hospital operate such a facility?

Answer – An off-site facility, which is not part of the hospital's licensed premises, can still be a department or division of the hospital administratively owned and operated by the hospital; it is just not part of the state licensed hospital. Seek provider based status from CMS.

Federal Provider-Based Determination

Question – What law governs provider based determination?

Answer – 42 Code of Federal Regulations Part 413.65 governs the provider based determination process.

Question – What does it mean?

Answer – A hospital may have an outpatient facility and receive reimbursement under Medicare if it meets the CMS provider based requirements.

Question – Must a hospitals' outpatient facilities be included in the hospital's license in order for the hospital to receive reimbursement for the outpatient service?

Answer – No. CMS does not require state licensure of outpatient facilities as a condition of the determination of provider-based status for Medicare reimbursement purposes in Texas. CMS does not require reimbursable services provided by hospitals to be performed on the hospital's licensed premises in Texas.

Question – What alternatives does a hospital have in order to operate an offsite outpatient facility?

Answer –.

(1) seek a provider based determination from CMS (it would still not be part of the hospital's licensed premises, but could be billed to Medicare as provider-based)
(2) move the facility/service/department onto the hospital's licensed premises, thereby making it part of the hospital's licensed premises;
(3) operate it as a separate service provided by the hospital not under the hospital's license.