



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-07-24

**DATE:** June 22, 2007

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Utilization Review Condition of Participation for Hospitals

**Memorandum Summary**

- State survey agencies have jurisdiction over the Utilization Review (UR) Condition of Participation (CoP) for accredited and non-accredited hospitals. The UR CoP is not part of the deemed program.
- Hospitals may utilize binding review by the Quality Improvement Organization (QIO) to comply.
- Although approved Medicaid UR processes may also be used to comply, there are none currently approved by the Centers for Medicare & Medicaid Services (CMS) for hospital UR compliance purposes.

This guidance regarding the survey of the UR CoP in hospitals is being provided in response to recent inquiries. According to the regulation at 42 CFR 482.30, all hospitals participating in Medicare and Medicaid must have in effect a UR plan that provides for review of services furnished by the institution and the medical staff to Medicare and Medicaid patients.

The regulation at 42 CFR 482.30 does, however, permit two exceptions to the requirement for a hospital UR plan: (1) where the hospital has an agreement with a QIO under contract with the Secretary to assume binding review for the hospital or; (2) where CMS has determined that UR procedures established by the State under Medicaid are superior to the UR requirements for the Medicare program and has required hospitals in that State to meet the UR requirements for the Medicaid program at 42 CFR 456.50 through 456.245. The UR CoP is not part of the deemed program for hospitals per 42 CFR 488.5. As such, State survey agencies have jurisdiction over the UR CoP for accredited and non-accredited hospitals.

According to the regulation at 42 CFR 476.86(e), QIO review and monitoring activities fulfill the requirements for compliance activities of State survey agencies under §1861(k) of the Social Security Act (the Act). The statutory requirements for utilization review at §1861(k) of the Act are reiterated in the UR CoP at 42 CFR 482.30. Therefore, a hospital meets the exception requirements of 42 CFR 482.30 if a QIO has assumed binding review for the hospital. (The hospital may not make requests for work to be performed by the QIO that goes beyond the scope of the QIO's contract with the Secretary.)

With the inception of the QIO program, the UR review function delegated to a hospital has essentially been eliminated. The regulation at 42 CFR 489.20(e) requires a hospital to maintain an agreement with a QIO to review the admissions, quality, appropriateness, and diagnostic information related to inpatient services for Medicare patients, if there is a QIO with a contract with CMS in the area where the hospital is located. CMS anticipates, therefore, that most hospitals comply with the UR CoP by means of the QIO exception.

With regard to the second exception, CMS would have to determine that UR procedures established by a State under Medicaid are superior to the UR requirements for Medicare. Currently no UR plans established by a State under Medicaid have been approved as exceeding the requirements under Medicare and required for hospital compliance with the Medicare UR CoP within that State.

### Surveys

State survey agencies should survey deemed hospitals for compliance with the UR CoP as part of full surveys following a complaint survey with conditions out, or validation surveys. Compliance determinations for all other hospitals should be made during recertification surveys.

Surveyors are to verify either that the hospital:

- Has its own UR plan in place and that it meets the regulatory requirements; or
- If it does not have its own UR plan, that it has an agreement with the QIO as described above. Surveyors should ask to see the signed, dated agreement.

It is not necessary for SAs to conduct routine surveys for compliance with the provider agreement requirement to have a QIO agreement. However, a hospital that does not satisfy the UR CoP through either its own program or a QIO agreement may be cited for violating not only the UR CoP at the condition level, but also the provider agreement requirement at 42 CFR 476.86(e).

In the event that CMS approves a State's Medicaid UR process for compliance with the Medicare UR CoP, we will advise the affected State survey agency.

Should you have further questions regarding enforcement of compliance with the UR CoP, please contact David Eddinger at 410-786-3429 or via e-mail at [David.Eddinger@cms.hhs.gov](mailto:David.Eddinger@cms.hhs.gov). Should you have further questions regarding the content of this memorandum, please contact Aviva Walker-Sicard at 410-786-8648 or via e-mail at [Aviva.walker-sicard@cms.hhs.gov](mailto:Aviva.walker-sicard@cms.hhs.gov).

Effective Date: Immediately. Please ensure that all appropriate staff are fully informed with 30 days of this memorandum.

Training: The information contained in this memorandum should be shared with all survey and certification staff, their managers, and the State RO training coordinators.

/s/

Thomas E. Hamilton