



Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C-11-05-LSC

DATE: December 17, 2010

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Hospital and Critical Access Hospital (CAH) Facility Life Safety Code (LSC)
Occupancy Classification Update

Memorandum Summary

- ***Hospital/ CAH LSC Occupancy Classification:*** Hospital and CAH component facilities may be classified as new or existing Health Care, Ambulatory Health Care, Business, or other occupancies, as allowed by provisions of the LSC.
- ***State Operations Manual (SOM) Appendices A, I & W*** are being updated accordingly.

Discussion

This memorandum is being issued to update the Centers for Medicare & Medicaid Services (CMS) guidance for hospitals and CAHs to assure alignment with the LSC occupancy classification provisions. In particular, we are providing clarification on determining the appropriate occupancy classifications for separated, non-contiguous or off-site facilities that are part of a certified Hospital or CAH. In accordance with 42 CFR 482.41(b) and §485.623(d), Medicare-participating hospitals and CAHs must meet the applicable provisions of the 2000 Edition of the National Fire Protection Association (NFPA) 101: LSC. The LSC permits certain hospital and CAH component facilities to be classified as occupancy types other than Health Care Occupancy, including Ambulatory Health Care, Business, and others. These other occupancy types have less stringent requirements. Accordingly, we are updating the interpretive guidance currently found in SOM Appendices A, I and W to ensure that it appropriately reflects the LSC requirements concerning occupancy classification. An advance copy of the updated Appendices is attached and may differ slightly from the final versions that will be released at a later date.

The LSC has a methodology for determining the appropriate occupancy classification that is required at a facility to ensure an adequate level of fire protection is present to protect patients and other building occupants. Allowing component facilities of a hospital or CAH to be surveyed as occupancy classifications other than Health Care, in accordance with the LSC, will ensure both that an adequate level of fire protection is afforded and unreasonable hardship or burden is not imposed upon a hospital or CAH.

The following sections provide an explanation of the LSC occupancy classification determination for hospital and CAH facilities.

Mixed Occupancy Classifications

Hospital or CAH component facilities located in a building with more than one occupancy classification must be adequately separated from the other building occupancies, as required by the LSC, in order to be eligible for their own occupancy classification. If a hospital or CAH component facility is not adequately separated from other building occupancies, the most stringent occupancy classification must apply to the entire building.

In summary:

For Mixed Occupancy:

- Building houses mixed occupancies; and
- Hospital or CAH component facility is adequately separated from other building occupancies;
 - If adequately separated, occupancy classification is determined as explained below,
 - If not adequately separated, the most stringent occupancy classification of all the building occupants applies.

Health Care Occupancy (LSC Chapters 18 & 19)

A hospital or CAH component facility, regardless of whether it is located in a separate building on the main provider's campus or is located off the main provider's campus, ("campus" and "main provider" are defined in 42 CFR 413.65(a)(2)), must initially be considered as a new or existing Health Care Occupancy.

Section 3.3.134.7 of the LSC defines a Health Care Occupancy as, "[a]n occupancy used for the purpose of medical or other treatment or care of four or more persons where such occupants are mostly incapable of self-preservation because of age, because of physical or mental disability, or because of security measures not under the occupants' control." According to sections 18/19.1.1.1.3, "health care facilities regulated by these chapters provide sleeping accommodations for their occupants." Further, sections 18/19.1.1.1.7 provide that, "[f]acilities that do not provide housing on a 24-hour basis for their occupants shall be classified as other occupancies and shall be covered by other chapters of this Code." Therefore, hospital or CAH component facilities that provide sleeping accommodations and medical treatment or services on a 24-hour basis for patients incapable of self-preservation must be classified as a Health Care Occupancy.

Section 1861(e) of the Social Security Act (the Act) defines "hospital" as being primarily engaged in providing care to inpatients and is not based upon a minimum number patients receiving treatment, care or services. CMS does not consider the number of patients in determining if a provider is a hospital or a CAH; therefore, a CMS-certified hospital or CAH does not need to have four or more inpatients at all times in order to be classified as a Health Care Occupancy. Occupancy classification must be determined regardless of the number of patients served at a hospital's or CAH's component facility.

In summary:

For Health Care Occupancy:

- Facility provides sleeping accommodations;
- Facility provides medical treatment or services on a 24-hour basis; and
- Patients are incapable of self-preservation.

Ambulatory Health Care Occupancy (LSC Chapters 20 & 21)

Section 3.3.134.1 of the LSC defines a Ambulatory Health Care (AHC) Occupancy as “[a] building or portion thereof used to provide services or treatment simultaneously for four or more patients that: (1) provides on an outpatient basis, treatment for patients that renders the patients incapable of taking action without the assistance of others; or (2) provides, on an outpatient basis, anesthesia that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others.” Considering the definition of an AHC provided in section 3.3.134.1 and the occupancy classification exemption provided in sections 18/19.1.1.1.7, a hospital or CAH component facility initially considered to be a Health Care Occupancy but which does not provide either sleeping accommodations or medical treatment or services on a 24-hour basis, may be classified as another occupancy type. For example, if it provides treatment or services to patients who are incapable or rendered incapable by treatment or anesthesia provided by the facility, it must be classified as a new or existing AHC Occupancy.

CMS does not consider the number of patients treated when determining an AHC occupancy classification. Furthermore, CMS does not consider whether or not a patient has been “rendered” incapable of taking action for self-preservation by the facility; rather, the only consideration is whether the patient is capable or incapable of self-preservation. Therefore, occupancy classification must be determined regardless of the number of patients being served or whether or not a patient has been rendered incapable of self-preservation by a hospital or CAH component facility.

In summary:

For Ambulatory Health Care Occupancy:

- Facility does not provide sleeping accommodations;
- Facility does not provide medical treatment or services on a 24-hour basis;
- Facility provides anesthesia services; and
- Patients are incapable of self-preservation.

Business Occupancy (LSC Chapters 38 & 39)

According to the Ambulatory Health Care section 20/21.1.1.1.4 of the LSC, “[b]uildings, or sections of buildings, that primarily house patients who, in the opinion of the governing body of the facility and the governmental agency having jurisdiction, are capable of judgment and appropriate physical action for self-preservation under emergency conditions shall be permitted to comply with chapters of this code other than Chapter 20/21.” Therefore, a hospital or CAH component facility previously considered an AHC Occupancy, but which does not provide anesthesia services or serve patients who are incapable of judgment and appropriate physical

action for self preservation under emergency conditions, could be classified as a new or existing Business Occupancy.

A patient’s cognitive and physical ability for self-preservation under emergency conditions must not be over-estimated. A patient may be incapable of self-preservation due to many factors, including, but not limited to, age, physical or mental disability, medical or therapeutic interventions, medication reactions, etc. In addition, when determining the ability for self-preservation, consideration must be given to not only the characteristics of all current patients, but also all potential future patients.

In summary:

For Business Occupancy:

- Facility does not provide sleeping accommodations;
- Facility does not provide medical treatment or services on a 24-hour basis;
- Facility does not provide anesthesia; and
- Patients are capable of self-preservation.

Other Occupancy Classifications

Hospital and CAH component facilities to which patients are not expected to have access (i.e., patients have no “customary access”), which are non-contiguous or adequately separated from other hospital or CAH occupancies, as determined by the LSC, could be classified as other occupancies. Other occupancy classifications may include, but are not limited to, Assembly, Day Care, Mercantile, and Storage Occupancies.

In summary:

For Other Occupancy Types:

- Patients are not expected to access the facility for medical treatment or services; and
- Facility is non-contiguous or adequately separated from other occupancies.

Questions: If you have questions about hospital and CAH occupancy classification determinations, please contact LCDR Martin Casey via e-mail at Martin.Casey@cms.hhs.gov.

Effective Date: This guidance is effective immediately. Please ensure that all certification personnel are appropriately informed as to using this guidance within 30 days of this memorandum.

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

/s/

Thomas E. Hamilton

Attachment: (1)

cc: Survey and Certification Regional Office Management