



DHCS – PROVIDER BULLETIN

DATE: AUG 26 2014

FROM: Quality Assurance Fee Unit
Safety Net Financing Division

SUBJECT: Hospital Quality Assurance Fee Program (HQAF): Private Hospital Change of Ownership and HQAF “New Hospital” Status; and Converted Hospital and its HQAF Eligibility (Public Ownership to Private Ownership)

INTRODUCTION

The Hospital Quality Assurance Fee Program commenced on January 1, 2014 as authorized in the Medi-Cal Hospital Reimbursement Improvement Act of 2013 (HQAF Act or Act), Senate Bill 239 (Statutes of 2013), codified in Article 5.230 (commencing with Section 14169.50) of the Welfare and Institutions Code.¹

The following process is applicable to private hospital change of ownerships (CHOWs) for purposes of participating in the HQAF Program.

This process also applies to a hospital that transfers from public ownership to private ownership and is considered a private hospital under certain conditions.

All statutory references herein are to the Welfare and Institutions Code, unless otherwise indicated.

CHOW ELIGIBILITY – Private Hospitals and Converted Hospitals

A hospital is considered a private hospital if it meets all the following criteria:

- 1) Is licensed pursuant to Health and Safety Code section 1250, subdivision (a).
- 2) Is in the Charitable Research Hospital Peer Group –or– is not designated as a specialty hospital.

¹ This provider bulletin is published by the Department of Health Care Services under the authority specified in Section 14169.61, subdivision (d), paragraphs (1) and (3). (Section 14169.70 provides in part: “Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Department may implement this article by means of provider bulletins, all plan letters, or other similar instruction, without taking regulatory action.”)

- 3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.
- 4) Is a nonpublic hospital, nonpublic converted hospital, or converted hospital as defined in Section 14105.98, subdivision (a).

A private entity that acquires a public hospital, or a nondesignated public hospital as defined in Section 14169.51, subdivision (ai), may be eligible to participate in HQAF if the private hospital meets Items 1) through 4) above. In the instance that such a hospital becomes a private hospital during a program period, it shall be charged the quality assurance fee in the subsequent program month to receive payments under Sections 14169.54, 14169.55, and 14169.57. The program period is a period not to exceed three years during which the HQAF fee model and the HQAF supplement payment model are effective as defined in Section 14169.51, subdivision (ap).

If a private hospital converts to a public hospital pursuant to Section 14169.51, subdivision (g), the newly converted public hospital shall not be charged the Section 14169.52 quality assurance fee and may become eligible in the subsequent program month to receive payments under Sections 14169.58. If the conversion occurred after the beginning of an HQAF payment installment period, private hospital fees and payments shall still be made by and to the converted public hospital for the period it was a private hospital. These payments will be calculated by multiplying the hospital's supplemental payment by the number of days that the hospital was a private hospital in the subject fiscal quarter, divided by the number of days in the subject fiscal quarter.

PROCESS

In order to participate in the HQAF program, the new operator of a private hospital that has an ownership change during the program period is responsible for HQAF fees for the program period, including, but not limited to, outstanding HQAF fees not paid by the previous operator. The new operator of a private hospital must also become financially responsible for any outstanding monetary obligations as determined in the process below.

The newly licensed operator of the hospital may not participate in the HQAF program if the acquired hospital is considered a "new hospital", as defined in Section 14169.51, subdivision (ah), and further clarified below in this bulletin.

A hospital constitutes a "new hospital," if both of the following occur:

- It undergoes a change of ownership and the new operator has not generated the days data source, as defined in Section 14169.51, subdivision (h) or Section

14169.59, subdivision (f), paragraph 22, used to determine HQAF Program payments and fees.

- It does not assume the prior operator's outstanding monetary obligations liabilities pursuant to Section 14169.61, subdivision (d), paragraph (2).

A new hospital, as statutorily defined above, may not participate in the HQAF Program, as of January 1, 2014. However, pursuant to Section 14169.61, subdivision (d), paragraph (1), if the following process below is satisfied, then a hospital may avoid being classified as a new hospital and the new owner/operator of the hospital may participate in the HQAF Program.

The process allows the new operator of a hospital to use the days data source of the previous operator, provided the new owner/operator agrees to be financially responsible for any outstanding monetary obligation incurred, as defined in Section 14169.61, subdivision (d), paragraph (2).

A new operator may be considered by the Department of Health Care Services (the Department) to be "financially responsible," if all of the following occurs:

- 1) The days data source used by the HQAF program to determine fee amounts and payment amounts was generated by the hospital in whole or in part when it was owned by the previous owner/operator.
- 2) The new owner/operator notifies the Department at least 60 days prior to the transaction date for the change of ownership (CHOW) or conversion. In addition, also at least 60 days prior to the transaction date of the CHOW or conversion, the hospital or prospective operator, or representative for either party, shall make a Public Records Act request to the Department for a listing of known and publicly available Medi-Cal recoveries, audit findings, overpayments, offsets and setoffs, repayment schedules, and any other Medi-Cal debt owed by the hospital as a part of the process authorized under Section 14169.61, subdivision (d), paragraph (1). This Public Records Act request shall include the following language: "This Public Records Act request is submitted in contemplation of a change of ownership of a hospital pursuant to Section 14169.61, subdivision (d), paragraph (2), subparagraph (B)." The Department's response to such a Public Records Act request is in addition to any other publicly and non-publicly disclosable written communications that are received by the hospital regarding known overpayments that have been asserted by the Department or its fiscal intermediary. Records that are not publicly disclosable

under the Public Records Act may only be released to the current owner/operator of the hospital.

- 3) The new owner/operator executes an agreement with the Department in which the new owner/operator agrees to pay all outstanding monetary obligations, as defined in 4) below. Pursuant to Section 14169.61, subdivision (d), paragraph (3), the Department shall have the discretion to determine whether a new owner (the new operator of the hospital) properly and fully agreed to be financially responsible for any outstanding monetary obligation in connection with the Medi-Cal program and may seek additional assurances from a new owner as the Department deems necessary.
- 4) Every outstanding monetary obligation as defined in Section 14169.61, subdivision (d), paragraph (2) is specified in the agreement with the Department including:
 - a) As required in Section 14169.61, subdivision (d), paragraph (2), subparagraph (A), the previous owner's unpaid HQAF fees and interest established by Article 5.230 (commencing with Section 14169.50); and
 - b) As required in Section 14169.61, subdivision (d), paragraph (2), subparagraph (B), and as required in paragraph 3), above, known overpayments that have been asserted by the Department or its fiscal intermediary by sending a written communication that is received by the hospital prior to the date that the new operator becomes the licensee of the hospital; and
 - c) As required in Section 14169.61, subdivision (d), paragraph (2), subparagraph (C), overpayments that are asserted by the Department or its fiscal intermediary after the date that the new operator becomes the licensee of the hospital and arise from customary reconciliations of payments, including but not limited to cost report settlements, and, except for the overpayments described in subparagraph b) above, shall exclude liabilities arising from the fraudulent or intentionally criminal act of a prior operator if the new operator did not knowingly participate in or continue the fraudulent or criminal act after becoming the licensee. Customary reconciliation of payments includes Disproportionate Share Hospital payments authorized in Section 14166.11.

Pursuant to Section 14169.61, subdivision (d), paragraph (3), the Department shall have the discretion to establish the terms for satisfying the outstanding monetary obligation assumed by the new operator pursuant to the process above, including, but not limited to, the timeliness with which these monetary obligations are met, recoupment

DEPARTMENT OF HEALTH CARE SERVICES
Safety Net Financing Division
1501 Capitol Avenue, Suite 71.3024
Sacramento, CA 95899



from amounts payable to the hospital under the HQAF Program or other sources, supplemental payments, and final settlements.

To the extent that there is a conflict between this provider bulletin and a previously published provider bulletin or regulation, this provider bulletin supersedes the conflicting prior provider bulletin or regulation.