

Health Department Announces Certificate of Need (CON) Reform For Ambulatory Care Services

- Certificate of Need (CON) Reform for Ambulatory Services

Albany, N.Y. (March 4, 2008) – The Department of Health today announced revisions to the certification process for ambulatory care that includes behavioral and chemical abuse services. These changes are part of an overall restructuring of New York's health care system to strengthen primary and preventive care, and were developed in collaboration with the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, and the Office of Alcohol and Substance Abuse Services.

The State's initiative to reform Medicaid reimbursement for outpatient services will not be successful without certification reform. Administrative responsibility for licensure, certification and Medicaid payment currently rests with several different agencies and is a complex and sometimes confusing process for providers. Reforming the certification process for clinic services is an imperative step in shifting service delivery away from expensive inpatient services to more efficient and effective primary care as well as rationalizing Medicaid reimbursement.

The Department of Health will continue to certify hospital outpatient departments and community clinics primarily engaged in the provision of medical services. Certification by the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities and/or the Office of Alcoholism and Substance Abuse Services will also be required when the provider offers significant behavioral health services as well.

This reform is intended to ensure that the appropriate agency has the lead authority for surveillance; that applicable rules are clear to providers; and, that certification rules facilitate the integration of behavioral health services into the primary care delivery system and advance coordinated care for patients with multiple co-morbidities. The new certification rules will go into effect on April 1, and will be applied prospectively. Reviews of existing clinics will also begin on April 1, and it is expected that any necessary certification adjustments would be completed by April 1, 2009.

The new certification guidelines are attached.

Revised: March 2008

Certificate of Need (CON) Reform for Ambulatory Services

Reforming the certification logic for clinic services is a critical step in the process of rationalizing service delivery as well as rationalizing Medicaid reimbursement. Certification reform is intended to ensure that the appropriate agency has lead authority for surveillance; that applicable rules are clear to providers; and, that certification rules do not impede coordinated care for patients with multiple co-morbidities and the integration of mental health services into the primary care delivery system.

Through an almost evolutionary process clinic certification has become irrational in New York. Administrative responsibility for licensure, certification and Medicaid payment rests with several different agencies and historically has not been well coordinated. Over the years, some certifications have been frozen and some rates have been frozen, leading providers to spend as much time figuring out how to get the right certification and highest reimbursement as how to provide the right service.

The State's multi-year initiative to reform Medicaid reimbursement for outpatient services will not be successful without certification reform. Certification determines the services a provider may offer and the agency that sets the standards the provider must meet. Facilities may not provide services beyond the thresholds described below without certification from the appropriate agency.

Certification Rules

DOH

- DOH will certify OPDs and D&TCs primarily engaged in the provision of medical services. OMH, OMRDD and/or OASAS certification is required when the below-noted thresholds are reached.

OMH

- The so-called freeze (i.e. budget neutrality regulations) on Article 31 certification will be lifted.
- OMH certification will be required at any site where a D&TC or OPD exceeds 10,000 annual mental health visits, or where over 30 percent of annual visits are for mental health services at that site.
- To allow for the provision of services in small mental health practices without a full Article 31 certification, a provider's extension clinic or satellite clinic with less than 2,000 mental health visits annually will not require certification under Article 31, unless the entire provider (including the extension/satellite clinic at issue) meets the threshold for OMH certification and the extension/satellite clinic itself meets the 30 percent threshold.
- Where more than 5% of visits at an Article 31 clinic are for medical services or any visits are for dental services, certification from DOH will also be required.
- School-based health centers are exempt from Article 31 certification.
- The Commissioners of OMH and DOH retain the right to waive Article 31 or Article 28 certification requirements respectively on a case by case basis. This discretion will only be exercised before the provider reaches the applicable threshold amount and will not be applied retroactively. Additional guidance will be issued as to the circumstances where the OMH and DOH respectively will consider a waiver application.
- Providers may not bill Medicaid for any service rendered above the applicable threshold amount unless the appropriate certification was in place at the time the service was rendered.

OMRDD

- "OMRDD-only" certification (Article 16) will be required for clinics where more than 80 percent of the individuals are developmentally disabled and more than 80 percent of total services are long term therapies and/or habilitative services.

- OMRDD and DOH joint certification will be required for clinics where a minimum of 50 percent of the consumers are developmentally disabled and more than 20 percent of total services are long term therapies and/or habilitative services.
- DOH-only (Article 28) certification will be required for clinics not meeting the above two criteria.
- At the dually certified sites, OMRDD will certify the long term therapy and/or habilitative services provided to individuals with developmental disabilities. DOH will have similar responsibilities for all other services (medical, dental and all services delivered to individuals who are not developmentally disabled).
- The Commissioners of OMRDD and DOH retain the right to waive Article 16 or Article 28 certification requirements respectively on a case by case basis. This discretion will only be exercised before the provider reaches the applicable threshold amount and will not be applied retroactively. Additional guidance will be issued as to the circumstances where the OMRDD and DOH respectively will consider a waiver application.
- Providers may not bill Medicaid for any service rendered above the threshold amount unless the appropriate certification was in place at the time the service was rendered.

OASAS

- All chemical dependence clinic services must be certified by OASAS. Joint OASAS and DOH certification will no longer be required when only chemical dependence services are provided.
- Where more than 5% of total visits at an article 32 clinics are for medical services or any visits are for dental services, certification from DOH is required. Medical services, for the purpose of this provision, will not include medical services required under OASAS Part 822 regulations.
- Providers may not bill Medicaid for any service rendered above the applicable threshold amount unless the appropriate certification was in place at the time the service was rendered.

These new certification rules will go into effect on April 1, 2008 and will be applied prospectively at the site level. However, for the purposes of addressing certification requirements for existing clinics the thresholds noted above will be used as a "screen" at the provider or facility level. Providers which are over the stated thresholds on a provider-wide basis (thereby tripping the screen) must notify DOH and the appropriate mental hygiene agency. The provider will then be examined at the site level by the appropriate staff at DOH and the relevant mental hygiene agency to determine if any changes in operating certificates are necessary to bring each site into compliance with this policy. Reviews of existing clinics against these criteria will begin on April 1, 2008 and it is expected that any necessary certification adjustments would be completed by April 1, 2009. As of that date, an existing provider must have the appropriate certification in place to provide services or bill Medicaid for services in excess of the thresholds noted above.

Additionally, OMH and OASAS are discussing rules for certification of services for individuals with co-occurring mental health and chemical dependence disorders. These rules, when developed, may allow OASAS and OMH certified facilities to provide a specified volume of additional mental health and chemical dependence services respectively.

Upon passage of the 2008-09 Budget, additional guidance regarding the relationship between certification reform and reimbursement reform will be issued.

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