

CMS FINALIZES REVAMPED HOME HEALTH AGENCY CONDITIONS OF PARTICIPATION

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April 2017

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CMS Finalizes Revamped Home Health Agency Conditions of Participation

January 18, 2017

CMS recently issued revamped home health agency (HHA) conditions of participation (CoPs), strengthening patient confidentiality, patient rights, quality assessment, care and performance standards. The final rule was published in the Federal Register on January 13, 2017, and will be effective on July 13, 2017.

The industry has long awaited this final rule. CMS first published proposed major revisions to the HHA CoPs in 1997, but never finalized that rule. In October of 2014, CMS issued the most recently proposed CoPs.

The final rule is intended to implement requirements that "focus on patient-centered, data-driven, outcome-oriented process that promotes high quality patient care at all times for all patients." The rule has a home health crosswalk, which references former requirements which have been relocated, and new standards that are being implemented.

The final rule adds new definitions and modifies existing definitions. The new definition of "branch office" adds supervision and administrative control requirements for the parent agency and

eliminates the "sufficiently close" requirement. The parent must still be available to respond to issues and needs of the branch. There is also a new parent branch relationship standard. A HHA's subunits operating under their own provider numbers will be considered distinct HHAs and must independently meet CoPs and state specific laws and regulations.

Currently, HHAs encode and electronically transmit Outcomes and Assessment Information Set (OASIS) information, which may not be released to the public, to the Quality Improvement and Evaluations System, Assessment Submission and Processing System or the CMS OASIS contractor. However, under the new rules, a HHA must electronically transmit data with electronic communications software in compliance with the Federal Information Processing Standard.

CMS has strengthened the patient rights standards and added patient notice requirements. The Notice of Patient's Rights must be transmitted in a language and manner the individual understands. There must first be a verbal notice before the start of care on the initial evaluation visit and then a written copy must be provided to the patient or the patient's representative, in case of lack of legal capacity, in writing within four business days of the initial evaluation. Notice must also be provided in advance of a specific service being provided when the service may be non-covered services, when there are charges the patient may be responsible for and when there are changes in patient care resulting in reduction or termination of on-going care. A new standard is added mandating that the patient and representatives be informed of HHA policies governing admission, transfer and discharge in advance of

the start of care. Hotline provisions are retained and investigation procedures are more robust.

CMS retains the current substantive requirements regarding patient comprehensive assessments, but they are reorganized and add a standard, emphasizing the timing and details of the comprehensive assessment. A new CoP is added for care planning, coordination of services and quality of care. The plan of care requirements are modified. There is also a specific standard related to conformance with physician orders and further requires qualified personnel to document verbal orders in the clinical record and sign, date and time physician orders. Verbal orders must be authenticated and dated by the physician. This is new. Review and revision of the plan of care must be revised as frequently as the patient's condition warrants, but no less frequently than every 60 days. This is not a new requirement. A new provision is added, permitting a physician-ordered resumption of care date as an alternative to the fixed 48 hour time frame for post-hospital reassessment, allowing greater flexibility to meet patient needs and preferences.

Coordination of care also requires better integration of services to meet each patient's individual needs and requires ongoing training and education of the patient and their caregivers, as well as specific training and education for discharge.

The HHA will be required to develop and implement – on an ongoing basis – a data driven quality assessment and improvement plan overseen by its governing body, demonstrating the HHA's capability to show measurable improvement in indicators to improve outcomes, patient safety and quality of care. The rule

requires utilization of quality indicator data with a focus on key areas critical to patient care and safety. This also replaces the "Group of professional personnel" and "Evaluation of the agency's program" CoPs. A new CoP is established addressing infection control and prevention. The infection control program must include preventive measures, control standards and education to staff, patients and caregivers.

The HHA must have an emergency preparedness plan and training program which can be part of a system-wide program if the HHA is part of a system with multiple separately certified health care facilities. The HHA must have a documented community-based and individualized risk assessment if it adopts a unified and integrated plan and have integrated policies and procedures.

There are also personnel standards and qualifications, as well as organizational and administrative services requirements, which are generally not new but more detailed. There is a revised personnel qualification requirement for HHA administrators. A new CoP for skilled professional services requires an interdisciplinary approach to care delivery.

CMS has adopted a new laboratory services requirement. The clinical records requirements with certain clarifications are retained. However, a new authentication of clinical records requirement is added as is a provision regarding retention and retrieval of records. Lastly, a HHA must comply with federal, state and local laws and regulations related to patient health and safety.

In contemplation of the July 13, 2017 effective date of these regulations, a HHA should review and revise its policies and procedures, personnel qualifications, and prepare a comprehensive notice of patient rights handout in patient-friendly language and a format taking into account the population it serves. The quality assessment and performance improvement, and infection prevention and control plans should be further developed and approved by the governing body that must supervise and oversee their implementation on an ongoing basis.

If you would like to discuss the content of this alert, please contact Danielle Trostorff or Leslie Goldsmith. For additional questions, feel free to contact the Baker Ober Health Law Group

