CMS ISSUES FINAL INTERPRETIVE GUIDELINES FOR THE CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES

On January 13, 2017, CMS published the revised Conditions of Participation ("CoPs") for home health agencies, 42 CFR 484, Subparts A, B, and Subpart C. The CoPs became effective on January 13, 2018. On August 31, 2018, the Centers for Medicare & Medicaid Services ("CMS") issued a Memorandum to State Survey Agency Directors (QSO-18-25-HHA) that released the final Interpretive Guidelines ("Interpretive Guidelines") to the final CoPs for home health agencies that CMS issued in January 2017. The Interpretive Guidelines are effective immediately and will be incorporated into the State Operations Manual as Part II of Appendix B.

The Interpretive Guidelines serve to interpret and clarify the CoPs for home health agencies. The Interpretive Guidelines define or explain the relevant statute and regulations but do not impose any requirements that are not otherwise set forth in statute or regulation. A home health agency ("agency") survey is conducted in accordance with the protocols and substantive requirements in the statute and regulations to determine whether a citation of non-compliance is appropriate. Deficiencies are based on a violation of the statute or regulations, which, in turn, is to be based on observations of the agency's performance or practices. The Interpretive Guidelines offer specific guidance to surveyors, including additional survey procedures and probes.

The final Interpretive Guidelines include specifics on all of the topics covered in the CoPs, including the following.

Care Planning – Section 484.60

The CoPs permit any nurse acting in accordance with state licensure requirements to: (1) receive verbal orders from a physician; (2) document the orders in the clinical record; (3) date and sign the order; and (4) record the time. The Interpretive Guidelines provide that when services are furnished based on a physician's verbal order, the order must be put into writing by personnel authorized to do so by applicable state laws as well as by the agency's internal policies. The orders must be signed and dated with the date of receipt by the nurse or qualified therapist (i.e., physical therapist, speech-language pathologist, occupational therapist or medical social worker) responsible for furnishing or supervising the ordered services. In the absence of a state requirement, the agency should establish a timeframe for physician authentication, i.e. for obtaining a physician signature for verbal/telephone orders received.

Patient Rights – Section 484.50

Under the final CoPs, the patient and any legal and/or patient-selected representative have the right to be informed of the patient's rights in a language and manner the individual understands. The written notice of rights and responsibilities must be understandable to persons who have limited English proficiency and accessible to individuals with disabilities. The Interpretive Guidelines provide that to ensure patients receive appropriate notification, written notice to the patient or their representative of their rights and responsibilities under this rule should be provided in hard copy unless the patient requests that the document be provided electronically. In addition, if a patient's or his/her representative's understanding of English is inadequate for the patient's comprehension of his/her rights and responsibilities, the information must be provided in a language or format familiar to the patient or his/her representative. Also, language assistance should be provided through the use of competent bilingual staff, staff interpreters, contracts, formal arrangements with local organizations providing interpretation, translation services or technology and telephonic interpretation services. In addition, all agency staff should be trained to identify patients with any language barriers that may prevent effective communication of their rights and responsibilities. Agency staff that have ongoing contact with patients who have language barriers should be trained in effective communication techniques, including the effective use of an interpreter.

Quality Assessment and Performance Improvement – Section 484.65

The final CoPs established a Quality Assessment and Performance Improvement ("QAPI") CoP. The final QAPI CoP contains five standards: Program Scope; Program Data; Program Activities; Performance Improvement Projects; and Executive Responsibilities. The final regulation states that the agency must develop, implement, evaluate and maintain an effective, ongoing, agency-wide, data-driven QAPI program. The Interpretive Guidelines provide that the indicators utilized in the agency's QAPI program are selected by the agency and are based upon

identified adverse or negative patient outcomes or agency processes that the agency wishes to monitor and measure. Each indicator must be measurable through data in order to evaluate any agency change in procedure, policy or intervention. An agency's QAPI program must include procedures for and frequency of measurement and analysis of indicators. The final Interpretive Guidelines add that the agency's QAPI program must also address the frequency with which such measurement and analysis will occur. In addition, an agency must maintain agency-wide surveillance, investigation, control and investigation of infectious and communicable diseases as an integral part of the QAPI program. While agencies should have a QAPI program in place, agencies should continue to work on implementing their QAPI projects.

PRACTICAL TAKEAWAYS

Agencies will need to continue to assess their current practices and procedures in light of the regulations and Interpretive Guidelines to determine what will need to change, what will need to be reorganized and what will need to be developed.

A copy of the Interpretive Guidelines can be found here.

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