

DISCHARGE PLANNING: KEY TAKEAWAYS FROM THE LONG-AWAITED FINAL RULE

On September 30, 2019, the Centers for Medicare & Medicaid Services (“CMS”) published a **final rule regarding discharge planning** (“Final Rule”) addressing care transitions and patient access to medical information. CMS had initially issued the proposed regulations in November 2015 to update discharge planning requirements for hospitals^[1], critical access hospitals (“CAHs”) and post-acute care (“PAC”) providers, such as home health agencies (“HHAs”), as part of CMS’s Conditions of Participation (“CoPs”). The Final Rule requires the discharge planning process to focus on patient goals and treatment preferences, with the goal of transparency, patient empowerment and quality care.

As part of the push for quality, the Final Rule requires that hospitals share with patients certain quality data for HHAs, skilled nursing facilities (“SNFs”), inpatient rehabilitation facilities (“IRFs”) and long-term care hospitals (“LTCHs”). These quality measures were initially included as part of the Improving Medicare Post-Acute Care Transformation Act of 2014 (“IMPACT Act”). Later, the measures were made publicly available through the Medicare **HHA**, **SNF**, **IRF** and **LTCH** compare websites and are currently reported as data to providers. CMS anticipates making other data required by the IMPACT Act publicly available in the near future and expects providers to make reasonable efforts to use the quality data as required by the IMPACT Act. Providers should use these data sources to assist patients to choose PAC providers that align with patient goals of care and treatment preferences and should document these efforts in patient records.

A summary of the Final Rule’s discharge planning requirements for hospitals, CAHs and HHAs follows.

HOSPITAL AND CAH DISCHARGE PLANNING REQUIREMENTS

Revisions to the patient rights and discharge planning CoPs under the Final Rule require that hospitals (including CAHs):

- Ensure that patients have the right to access their own medical records upon oral or written request, in the form and format requested by the individual (including electronically, if readily producible in that format) and within a reasonable time frame.
- Develop and implement an effective discharge planning process that:
 - Focuses on the patient’s goals and treatment preferences; and
 - Includes the patient and his or her caregivers/support person(s) as active partners in the planning for post-discharge care.
- Include discharge planning evaluations that:
 - Allow for timely arrangement of post-hospital care prior to discharge;
 - Include evaluation of the likely need for, availability of, and patient access to non-health care services and community-based care providers; and
 - Provide patients and their caregivers with assistance selecting a PAC provider, including the sharing of HHA, SNF, IRF or LTCH data on quality and resource use measures relevant to the patient’s goals of care and treatment preferences.

For patients discharged and referred for HHA services, or for patients transferred to a SNF, IRF or LTCH, hospitals must also:

- Include in the discharge plan a list of Medicare-participating HHAs, SNFs, IRFs or LTCHs that are available and serve the patient’s geographic area. The hospital must document in the patient’s medical record that the list was provided;
- For patients enrolled in managed care organizations, the hospital must share information it has about the providers and suppliers that are in the managed care organization’s network and must make the patient aware of the need to verify that providers and suppliers are in network;
- Inform the patient or the patient’s representative of the freedom to choose among participating Medicare providers and suppliers of post-discharge services. The hospital must not specify or otherwise limit the qualified providers or suppliers available to the patient; and

- Identify any HHA or SNF to which the patient is referred in which the hospital has a disclosable financial interest, as well as any HHA or SNF that has a disclosable financial interest in the hospital.

In the Final Rule preamble, CMS notes that while the CAH discharge planning requirements are very similar to those applicable to other hospitals, “there are some necessary differences as a result of some of the challenges that are unique to CAHs, including their rural location, small size and limited resources.” CMS further confirmed its “belie[f] that most hospitals and CAHs have discharge planning processes in place and that these providers will be well prepared to implement the final discharge planning requirements.”

HHA DISCHARGE PLANNING REQUIREMENTS

The Final Rule also significantly streamlines the discharge planning requirements applicable to HHAs as compared to the requirements originally set forth in the proposed rule. CMS acknowledged that the proposed rule duplicated the requirements set forth within the newly-revised HHA Condition of Participation—42 CFR 484.60(c)(3)(ii)—requiring HHAs to communicate with all relevant parties involved in the HHA patient's plan of care. The Final Rule requires HHAs to:

- Develop and implement an effective discharge planning process;
- For patients transferred to another HHA or discharged to a PAC, provide patients and their caregivers assistance in PAC provider selection, including the sharing of HHA, SNF, IRF or LTCH data on quality and resource use measures;
- Provide all necessary medical information pertaining to the HHA patient to the receiving PAC, facility or health care practitioner; and
- Comply with requests for additional clinical information made by the receiving facility or health care practitioner.

Implementation of the final requirements for hospitals, CAHs and HHAs is required by **November 29, 2019**.

If you have any questions or would like additional information about this topic, please contact:

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[1] Includes long-term care hospitals, psychiatric hospitals, children's hospitals and cancer hospitals.