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

The Centers for Medicare & Medicaid Services (“CMS”) released a draft of the Interpretive Guidelines ("Draft Interpretive Guidelines") to the final Conditions of Participation (“CoPs”) for home health agencies that CMS issued in January 2017. The CoPs are scheduled to be implemented January 13, 2018. CMS has asked for feedback on the Draft Interpretive Guidelines.

The Draft Interpretive Guidelines serve to interpret and clarify the CoPs for home health agencies. The Draft Interpretive Guidelines merely define or explain the relevant statute and regulations and 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 Draft Interpretive Guidelines offer specific guidance to surveyors, including additional survey procedures and probes.

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

1) Care Planning – Section 484.60.

The CoPs permit any nurse acting in accordance with state licensure requirements to receive verbal orders from a physician and document the orders in the clinical record and date and sign them and record the time. The Draft Interpretive Guidelines do not require that the home health plan of care be submitted to the physician every time a verbal order is received.

2) 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 Draft 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 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.

3) 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 Draft 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. While agencies have until January 13, 2018 to begin performance improvement projects, they should start working on implementing their QAPI projects now.

PRACTICAL TAKEAWAYS

In the coming days, we will be providing additional, more in-depth analysis of the Draft Interpretive Guidelines. Agencies will need to quickly begin assessing their current practices and procedures in light of the regulations and Draft Interpretive Guidelines to determine what will

need to change, what will need to be reorganized and what will need to be developed. Agencies should not wait to begin this process with a compliance deadline of January 13, 2018.

A copy of the Draft Interpretive Guidelines is located here.

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