

CMS ISSUES PROPOSED RULE REQUIRING PROVIDERS AND SUPPLIERS TO NOTIFY MEDICARE BENEFICIARIES OF RIGHT TO ACCESS QIOS AND STATE SURVEY ORGANIZATIONS

Executive Summary

The Centers for Medicare and Medicaid Services ("CMS") has proposed a new rule requiring certain categories of Medicare providers and suppliers ("Providers") to formally notify Medicare beneficiaries of their right to communicate health care concerns to the local Medicare quality improvement organization ("QIO") and/or to the state survey agency ("Proposed Rule"). The Proposed Rule, in many respects, is similar to an existing rule currently requiring hospitals to formally notify Medicare inpatient beneficiaries of their right to communicate health care concerns to the QIO. Following a 2006 finding of the Institute of Medicine that QIOs perform few reviews of Medicare beneficiary complaints concerning the quality of care received under the Medicare program, CMS concluded that the low volume of QIO reviews could be attributed to beneficiaries' lack of awareness of their right to submit complaints. The Proposed Rule ultimately seeks to ensure the robustness of one of many parallel pathways toward achieving high quality and safe health care for Medicare beneficiaries.

Details of the Proposed Rule

Currently, hospitals are required to provide written notice to Medicare beneficiaries receiving inpatient services advising those beneficiaries of their right to communicate concerns about the quality of care they are receiving (or have received if health care services have already been rendered) to the QIO in the state the services are/were provided. The Proposed Rule would extend the written notice requirement to the Medicare Providers listed below. The notice must be provided at the "start of care," which for some Providers may mean at the time of inpatient admission or at the time an initial assessment is performed in advance of care. The notice must contain the name of the QIO, its mailing address, electronic mail address, and a telephone number. The Provider must document that the written notice has been given to the beneficiary or to a representative or surrogate chosen by the beneficiary. Providers should be aware that the proposed written notice may not be communicated to Medicare beneficiaries through a representative or surrogate in place of providing an interpreter for limited English proficient or deaf/hard of hearing patients. At this time, CMS is not specifying a specific format for the required notice or documentation process and will leave that to the discretion of the affected Providers.

The Providers subject to the Proposed Rule are as follows:

- Ambulatory Surgical Centers ("ASCs")
- Hospices
- Hospitals
- Long Term Care Facilities ("LTCFs")
- Home Health Agencies ("HHAs")
- Comprehensive Outpatient Rehabilitation Facilities
- Critical Access Hospitals
- Clinics and Rehabilitation Agencies
- Portable X-Ray Services
- RHCs and FQHCs

The Proposed Rule also would impose an additional written notice requirement on certain Providers to inform all patients, including Medicare

beneficiaries, of the mailing address, electronic mail address, and telephone number of the appropriate state survey agency as an additional avenue to report quality of care complaints. This additional written notice requirement would be imposed on all of the Providers listed above other than ASCs, LTCFs and HHAs. ASCs, LTCFs and HHAs already are required to provide written notice of state survey agency contact information to Medicare beneficiaries under existing regulations.










CMS has requested public comment on the Proposed Rule. CMS has specifically requested feedback concerning whether the agency should require Providers to notify beneficiaries of their rights to contact the QIO a second time upon completion of the treatment or, alternatively, at the conclusion of treatment, only if there has been an adverse event. Comments must be submitted no later than 5 p.m. on April 4, 2011 in accordance with instructions set forth in the Federal Register at: <http://edocket.access.gpo.gov/2011/pdf/2011-2275.pdf>. Please refer to file code CMS-3225-P.

Take-Away Considerations

The Proposed Rule not only reflects CMS's continued efforts to improve the quality of care throughout the health care industry, but also facilitates beneficiaries' role in communicating their concerns about the quality of care they receive. Regardless of how the courts and future political debate may ultimately impact the Affordable Care Act, the focus on quality and patient safety will march inexorably forward.

In consideration of the Proposed Rule, Providers may wish to assess and reevaluate how they handle beneficiaries' health care concerns and complaints. The Proposed Rule, if finalized as written, may certainly result in an increased number of QIO and state survey agency complaints being registered and reviewed. Providers and their counsel should be prepared to respond.

If you have any questions, or need assistance preparing or submitting comments, please do not hesitate to contact:

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