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CLIENT ADVISORY

CMS Proposes New Requirements for Nursing Facility and Hospice Arrangements

Introduction

On October 22, 2010, the Centers for Medicare and Medicaid Services (CMS) released proposed new regulations that would revise the Conditions of Participation (COP) for Long Term Care (LTC) facilities by requiring written agreements between LTC facilities and Medicare-certified hospice providers. CMS proposes a number of specific requirements for such agreements. In many ways the proposed regulations memorialize current practice and mirror the rules currently directed at hospices, but LTC facilities should be aware of the proposed regulations and prepare for their implementation.

The proposed regulations are a response to concerns by CMS that there may be instances of Medicare beneficiaries receiving inadequate or duplicative services. Through the proposed regulations, CMS seeks to provide clear regulatory guidance regarding the responsibilities of providers in caring for LTC facility residents who receive Medicare-certified hospice care.

Provisions of the Proposed Regulations

CMS proposes that LTC facilities may either a) arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospice providers or b) not arrange for such services and assist a resident in transferring to a facility that will arrange for hospice services. For those facilities that do not wish to continue to care for a hospice eligible resident or do not choose to contract with a hospice selected by the resident, this rule could provide a limited basis for resident discharge.

For those LTC facilities that choose to make arrangements with a Medicare-certified hospice to provide hospice care in the facility, the proposed rule will require a written agreement between the facility and the hospice before any hospice care is provided to a particular facility resident. An authorized individual from both the hospice and the LTC facility will have to sign such a written agreement, including those situations involving related providers.

The proposed rules specify that the written agreement include, at a minimum, the following elements:



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- A description of the services the hospice will provide;
- An explanation of the hospice's responsibilities for determining the appropriate hospice plan of care;
- An explanation of the services the LTC facility will continue to provide, based on each resident's care plan;
- A communication process and documentation plan between the LTC facility and the hospice designed to ensure that the needs of the resident are addressed and met 24 hours a day; and
- A provision requiring the LTC to report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of an unknown source, and misappropriation of resident property by hospice personnel, to the hospice administrator immediately when the LTC facility becomes aware of the alleged violation.

In addition, CMS proposes additional duties and responsibilities that must be delineated in the written agreement, such as the requirement that the LTC facility immediately notify the hospice provider regarding:

- A significant change in the resident's physical, mental, social, or emotional status;
- Any clinical complications that could require a change in the resident's care plan;
- A condition unrelated to the terminal condition that might require transfer of the resident to another facility; and
- The resident's death.

Other duties and responsibilities that the proposed rule will require to be delineated include a LTC facility's provision of 24-hour room and board and personal care and the hospice's responsibility to provide medical direction and management, nursing, counseling, social work, and other hospice services.

Conclusion

While the proposed rules largely follow current practices and mirror rules already in place for hospice providers, LTC providers should be aware of the proposed rules and comment as desired by the December 21, 2010 deadline. If our firm can be of assistance in this comment stage of the rule making process or provide further interpretation of the proposed new rules, please let Peter Mellette, Harrison Gibbs or Nathan Mortier know.