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Hospital Discharge Planning Must Include the Availability of Hospice Services

Hospitals are required by law and Medicare guidance to conduct discharge planning evaluations for a patient's likely need for post-hospital services, including hospice services. As part of this discharge planning process, Medicare guidance requires participating hospitals to provide a complete list of available hospice providers in a patient's requested geographic area, if hospice care is indicated for that patient.

Some hospitals and hospices might not be aware of this requirement because the Medicare Hospital Conditions of Participation ("COPs") do not specifically mention hospices as a type of post-hospital service provider that must be identified to appropriate patients during the discharge planning process. Rather, for hospital discharge plan requirements, the COPs only mention home health agencies and skilled nursing facilities in 42 C.F.R. § 482.43(c). When Medicare law and guidance is examined more closely, however, it is clear that Medicare also requires hospitals to provide information to patients regarding available hospice services when deemed appropriate by the hospital discharge plan.

The Social Security Act requires the Secretary of the Department of Health and Human Services to develop guidelines and standards for the hospital discharge planning process, in order to promote a smooth transition from hospital care to the most appropriate setting for post-hospital treatment. These guidelines and standards must include "an evaluation of a patient's likely need for appropriate post-hospital services, including hospice care and post-hospital extended care services and the availability of those services".¹

The Secretary's standards and guidance on hospital discharge planning can be found in both the COPs and in Medicare's State Operations Manual. The Manual is the official guidance that Medicare surveyors follow when conducting certification surveys of hospitals that participate in the Medicare program. According to the Manual, Medicare interprets the Social Security Act and 42 C.F.R. § 482.43(b)(4) to require participating hospitals to:

- Have a discharge plan for each patient that includes an evaluation of the patient's likely need for hospice care;
- Provide a list of available Medicare certified hospices that serve the geographic area requested by the patient;
- Not specify or limit qualified hospices to which a patient is referred, and identify those entities to whom the patient is referred in which the hospital has a financial interest or which has an interest in the hospital; and
- Document in the patient's medical record that a list of hospices was presented to the patient or the individual acting on the patient's behalf.²

The Manual's survey procedures ask Medicare surveyors to interview patients who the hospital's discharge evaluation identified as needing hospice services to determine if:

- A list of Medicare certified hospice facilities serving the patient's requested geographic area was presented to the patient;
- The patient's choice of hospice was respected, when possible;
- The choice of hospices was limited in any way;
- The patient was inappropriately steered to a particular hospice; or
- The patient was informed of any hospice in which the hospital has a financial interest.

While the Manual represents Medicare's surveyor guidelines and does not carry the force of law in the same way that a statute or regulation does, when the Manual guidance is taken together with the provision of the Social Security Act discussed above, it is clear that hospitals must examine the appropriateness and availability of hospice services for patients during the discharge planning process. As a result, hospitals participating in the Medicare program should include information on available hospice providers when a patient's discharge plan indicates that a patient might be eligible for hospice care. Hospitals may not limit the list of available hospices, and must disclose to patients any financial interest that the hospital has in a hospice to which the patient is referred.

Hospices should work with the discharge planning staff in local hospitals to ensure that the hospital includes the hospice in its list of available hospice service providers. This will help the hospitals to meet their obligations under the Medicare program, and increase the hospice's exposure to patients who might be eligible for, and elect to receive, hospice services.

Reinhart Boerner Van Deuren's Hospice and Palliative Care Practice Group serves hospices across the country in a variety of areas, including: regulatory compliance; survey and certification; accreditation; licensing; HIPAA; caregiver misconduct investigations; due diligence, mergers and acquisitions and other corporate matters; labor and employment; criminal and civil investigations by state or federal government agencies; litigation contracts and daily operational issues.

¹Social Security Act § 1861(ee)(2)(D), 42 U.S.C. 1395x(ee)(2)(d).

²Medicare State Operations Manual, Appendix A – Survey Protocol, Regulations and Interpretive Guidelines for Hospitals, AO-0354.



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Hospices are encouraged to contact their legal counsel.