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New Regulations Emphasize the Growing Role of Hospice Medical Directors and Other Hospice Physicians

On November 22, 2005, the Centers for Medicare and Medicaid Services ("CMS") released a final rule (the "Final Rule") revising existing hospice regulations governing coverage and payment for hospice care under the Medicare program. Effective January 23, 2006, these revised regulations provide, among other things, that supportive documentation must accompany the physician certifications that a patient has a terminal illness with a prognosis for life expectancy of six months or less.

This article provides a discussion of the requirements that clinical documentation must accompany a physician's certification of a hospice patient's terminal illness and that the hospice only admit patients on the recommendation of the hospice medical director.

POSTED:

Feb 28, 2006

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Requirement to Have Clinical Documentation Supporting Physician Certification

For several years, CMS has taken the position, through program memoranda and letters to the hospice fiscal intermediaries, that documentation should be included in a patient's medical record to support the certification of terminal illness. In addition, the SCHIP Benefits Improvement and Protection Act of 2000 made statutory amendments to the Social Security Act clarifying that a physician certification must be based on the physician's clinical judgment that the patient has a prognosis of six months or less if the disease runs its normal course. Given that the Hospice Regulations had not been revised in accordance with these statutory and policy changes, CMS sees these new regulations as merely reflective of its current policy, as indicated in its commentary of the final rule.

The new regulation, found at 42 C.F.R. 418.22, requires clinical information and other documentation supportive of a medical prognosis for a life expectancy of six months or less to accompany the physicians' certification of terminal illness. This clinical information and documentation must be filed in the medical record along with the written certification prior to submitting a claim for payment. The regulation goes on to provide that clinical information may initially be given

verbally, but then must be documented in the medical record and included in the hospice's eligibility assessment.

These requirements obviously place a burden upon certifying physicians that was not found in the old Hospice Regulations. The previous regulations merely required the certification to specify that the individual's prognosis was for a life expectancy of six months or less, without requiring supporting documentation or information. Comments received by CMS upon release of the proposed rule expressed concern over these documentation requirements. Specifically, it was feared that CMS was improperly focusing on laboratory or pathology tests while discounting physician experience. CMS rejected these concerns, and stated that it was reasonable to require documentation to support certification, and emphasized that clinical information is "critical" to the certification decision. CMS added that a "signed certification, absent a medically sound basis that supports the clinical judgment, is not sufficient for application of the hospice benefit under Medicare." Through this final rule, CMS disclosed what it views as "sufficient" supportive information which must accompany a certification. In explaining its rationale, CMS stated:

> We believe that clinical information and documentation are critical to the certification decision. We recognize that some documentation may physically arrive at the hospice and be placed in the medical record after the start of care; however, that should not mean that the information does not come to the attention of the hospice and be included in the certification and admission process. The attending physician may well report clinical information by telephone or interview, with written documents to arrive later. It is the information needed for the hospice's IDG to develop the initial plan of care for the new patient, and therefore we would expect the information to accompany, in some fashion, the certification, although some of it may not arrive physically at the hospice until later. We are revising this final rule to indicate that clinical information may initially arrive verbally and is documented in the patient's medical record as part of the hospice's assessment of eligibility for hospice.

Proper documentation has long been recognized as a crucial piece of any hospice program's regulatory compliance program. Clinical documentation supporting a physician's certification of terminal illness is even more important given the increased scrutiny of hospice admissions in recent years. Each hospice fiscal

intermediary has an obligation as a Medicare contractor to focus on areas of the hospice program which it believes may be susceptible to abuse. Fiscal intermediaries have been concentrating on hospice beneficiaries with non-cancer diagnoses and long lengths of stay in hospice as a target for probe edits. In the past, a hospice with little or no documentation to support the six month prognosis was vulnerable to claim denials if the claims were selected for a probe edit. After January 23, 2006, this same hospice will be non-compliant under the Hospice Regulations, which could result in survey citations.

Requirements for Hospice Admission Process

The final rule also includes new requirements that hospices must follow when admitting patients. A hospice may admit a patient only on the recommendation of the medical director, with input from the patient's attending physician, if any. CMS stated that the intent of this rule is not to require face-to-face or direct consultation between the medical director and attending physician. The medical director could obtain any required information indirectly, such as through a hospice nurse or others who could bring the attending physician's knowledge of the patient to the medical director when the admission decision is made.

The new hospice admission process also requires the hospice medical director to consider at least three categories of information in reaching a decision to certify that a patient is terminally ill. These categories include: the patient's diagnosis, the patient's other health conditions (whether related or unrelated to the terminal condition) and any other clinically relevant information. This is consistent with the requirement that clinical documentation must accompany the physician certification, as previously discussed. CMS again clarifies that there is no requirement that medical documentation be physically in the hands of the medical director when he or she makes the admission decision. The medical director must only consider the information and medical reports may arrive later for inclusion in the patient's medical record.

Conclusion

These revised regulations are just another indication of the important role the medical director fills within every hospice program. As previously discussed, CMS provided more evidence of the expanding role of the hospice medical director in May of 2005, when proposed revisions to the Hospice Regulations were issued. The final rule serves to emphasize again the need for hospice to actively engage

their medical directors, other hospice physicians, and the patient's own attending physician in the hospice admission, certification, and discharge process.