

Quality Assurance and Performance Improvement for Nursing Homes Under the Proposed Rule

In the July 16, 2015 edition of the Federal Register, CMS proposed a comprehensive rewrite of the regulations governing skilled nursing facilities and nursing facilities ("Facility" or "Facilities") that participate in the Medicare and Medicaid programs. The proposed rule includes a requirement that each Facility develop, implement and maintain an effective comprehensive, data-driven quality assurance and performance improvement ("QAPI") program that focuses on systems of care, outcomes of care and quality of life.

Stakeholders have expressed concern over the cost of complying with the proposed QAPI rule, both in terms of the dollar impact on Facility finances and in terms of the time investment that will be required by employees to implement and maintain an effective program. Though the requirements discussed in this client alert have not yet been finalized, we hope to provide clarity for our clients as they evaluate how to maintain compliance prior to the final rule becoming effective.

What Documentation Is Needed and When?

Facilities should diligently maintain detailed documentation in support of their QAPI initiatives. It is important that each Facility maintains documentation and is able to demonstrate that the QAPI program satisfies all regulatory requirements. This documentation must be presented to state or federal surveyors during the first standard survey one year after the final rule becomes effective and at each survey thereafter. It must also be provided upon surveyor request during the course of subsequent surveys.

What Does a QAPI Program Look Like?

A QAPI program must be ongoing and comprehensive, and address all the services provided by a Facility. It must address all systems of care and management practices; include clinical care, quality of life and resident choice; use the best available evidence to define and measure quality indicators and goals that reflect processes of care and Facility operations that are predictive of desired resident outcomes; and reflect the complexities, unique care and services that the Facility provides.

POSTED:

Sep 15, 2015

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Do Facilities Need to Develop Written Quality Assurance (QA) Policies and Procedures?

Yes. Facilities must establish and implement written policies and procedures for obtaining feedback, collecting data and monitoring performance indicators. Policies and procedures must include: (1) maintenance of systems to obtain and use feedback and input from caregivers, other staff, residents and resident representatives; (2) maintenance of systems to identify, collect and use data from all departments and how such information will be used to develop and monitor performance indicators; (3) development, monitoring and evaluation of performance indicators; and (4) adverse event monitoring, including methods by which Facilities will identify, report, track, investigate, analyze and use data and information relating to adverse events.

Do Facilities Need to Develop Written Performance Improvement Policies and Procedures?

Yes. Facilities will be required to develop, implement and maintain comprehensive policies and procedures designed to improve performance in areas targeted through the QA process. Each Facility must develop and implement policies addressing: (1) how it will use a systematic approach (e.g., root cause analysis, etc.) to determine underlying causes of problems; (2) development of corrective actions designed to effect change to prevent problems; and (3) how it will monitor the effectiveness of its performance improvement activities to ensure that improvements are sustained.

Are records of the QA committee discoverable in litigation?

No. Consistent with the requirements contained in Wis. Admin. Code DHS § 132.46, the proposed rule requires Facilities to maintain a QA committee composed of the Director of Nursing, Medical Director and at least three other staff members. QA committee records may not be disclosed by any state or by CMS except insofar as the disclosure is related to the compliance of the QA committee with the requirements of the QAPI rule. Good faith attempts by a QA committee to identify and correct quality deficiencies will not be used as a basis for sanctions.



Conclusion

The proposed QAPI rule is aimed at improving the quality of care by utilizing the vast amounts of data that Facilities can collect. The proposed QAPI rule for home health agencies and the Improving Medicare Post-Acute Care Transformation Act of 2014 (the "IMPACT Act") also aim to improve the quality of care by requiring providers to collect and use data to make targeted improvements. While implementing and maintaining an effective QAPI program may be resource-intensive, it remains to be seen whether the costs will be outweighed by improvements to resident care.

If you have any questions about the steps your Facility should take to ensure compliance with the proposed QAPI rule, or if you would like help developing or reviewing your QAPI policies or procedures, please contact Rob Heath or your Reinhart attorney.

The next client alert in this series will explore the proposed rule requiring facilities to have in operation a compliance and ethics program as well as the proposed requirements for facilities that seek to enforce binding arbitration agreements.

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