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CMS Issues New Proposed Conditions of Participation for SNFs Providing or Arranging for Hospice Services

Shorts on Long Term Care December 2010

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On October 22, 2010, CMS published proposed Medicare conditions of participation for SNFs that directly provide or arrange for the provision of hospice services in their facilities. CMS estimates that 35% of hospice patients nationally receive that service in SNFs. The proposed rule for SNFs follows, and closely parallels, revised Medicare conditions of participation for hospices issued by CMS in June 2008. That rule included substantial provisions governing the relationship of SNFs and hospices that provide services in SNFs, and CMS has attempted to closely mirror those provisions in this proposed regulation.

A major focus of the proposed regulation is on contracts between SNFs and hospice providers and what must be included in those contracts. The proposed rule, like the June 2008 hospice regulations, focuses heavily on the division of responsibility between the SNF, which is required to provide room and board and care related to a resident's needs that are unrelated to their terminal illness, and the hospice, which is responsible for providing palliative care related to the resident's terminal condition. Under the June 2008 hospice regulations, hospices have very specific services they must provide directly and, where they contract with the SNF or other providers to offer services they are not required to provide directly, those regulations dictate certain obligations the hospice must undertake to ensure continuity of care, coordination with care the SNF must provide, and communication between the SNF and hospice. The new proposed SNF regulations also focus on coordination of care, communication between the SNF and hospice, and ensuring that each provider understands and carries out its delegated responsibilities for long term care residents electing the hospice benefit.

Some of the key provisions of the proposed regulation include:

- The SNF must ensure that hospice services meet professional standards that apply to the hospice provider and "the timeliness of the services." A well-drafted agreement will require that the hospice do this, and the failure to do so will be identified as a material breach in the agreement.
- The timing and the content of the agreement is critical. The LTC facility must have in place a signed written agreement (with 11 required provisions) with the hospice provider before any hospice services are furnished to any resident. Some of the proposed required provisions include: (a) identification of all hospice services to be provided; (b) specification of the hospice's responsibilities and those of the SNF under each resident's care plan; (c) a clear communication process (including documentation) between the SNF and the hospice provider to ensure resident needs are addressed 24 hours a day; (d) the events

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that require the SNF to immediately notify the hospice provider (a significant change in the resident's physical, mental, social, or emotional status; clinical complications that suggest a need to alter the place of care; a need to transfer the resident from the facility for any condition that is not related to the terminal condition; or the resident's death); (e) the hospice's responsibility for determining the course of appropriate hospice care, which must be updated as needed; (f) the SNF's responsibility to provide 24-hour room and board, personal care, and nursing needs at the appropriate level of care; and (g) the SNF's duty to report any allegations of mistreatment, neglect, abuse, or injuries of a resident by hospice personnel to the hospice administrator "immediately" once the SNF is aware of such allegations.

- The SNF must designate a member of the resident's interdisciplinary team to be responsible for working with the hospice provider and coordinating the resident's care between SNF and hospice. These responsibilities (from the rule) principally involve collaboration and communication to coordinate the care of each resident.
- The SNF arranging hospice care must ensure that each resident's written plan of care includes both the most recent hospice plan of care and a description of the services furnished by the SNF to attain or maintain the resident's well-being.

This proposed regulation, which we expect to become final without major revisions, will require that all SNF-hospice agreements be reviewed and probably revised once the rule is final. Poyner Spruill's health care team published a series of model SNF-hospice agreements in June 2008 when the revised hospice conditions of participation were published, which included provisions on the provision of hospice services in SNFs. Included in those was a template specifically for hospices and SNFs who have shared responsibility for hospice residents receiving end of life care in nursing facilities. CMS is accepting public comments on the proposed regulations until December 21, 2010.

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