CLIENT ALERTS & INSIGHTS

Four Recent Survey Issuances by CMS

OCTOBER 16, 2012

On September 27, the Centers for Medicare & Medicaid Services (CMS) issued four survey and certification policy memos to state survey agencies (SAs) for nursing facility and skilled nursing facility providers.* The issuances included:

- S & C: 12-45-NH with revisions to State Operations Manual (SOM), Appendix P (traditional survey protocol), and SOM Chapter 9 with revised forms;
- S & C: 12-46-NH with revisions to F322, Feeding Tubes;
- S & C: 12-47-NH with revisions to F155, Advance Directives; and
- S & C: 12-48-NH with revisions to F309, Quality of Care, End of Life.

With the exception of the revisions to the survey protocol to be implemented on December 1, the SAs must implement the guidance by November 30. As has been the recent practice of CMS, the policy memos included training materials for use in educating surveyors about the new guidance.

The changes to Appendix P for the traditional nursing home survey protocol are generally to update the processes to include the changes implemented by the use of MDS 3.0 and the return of the Quality Measures. Forms have been updated in Chapter 9 to reflect similar changes.

The interpretive guideline updates provide numerous pages in each data tag to discuss and outline expectations for planning and care delivery and documentation of resident care. For example, F322 specifically provides that feeding tubes are to be used only when clinically unavoidable. The definition of unavoidability requires the determination that the benefits outweigh the risks of use and that there is a clear indication for using the feeding tube. However, the discussion of unavoidability appears to go beyond the definition in stating that "[a] feeding tube may be considered unavoidable only if no other viable alternative to maintain adequate nutrition and/or hydration is possible and the use of the feeding tube is consistent with the clinical objective of trying to maintain or improve nutritional and hydration parameters."

F155 and F309 provide a common definition of advance care planning to include the process to identify and update the resident's preferences regarding care and treatment at a future time. F155 outlines guidance for the use of advance directives and specifically states that a resident has the right not to execute an advance directive. F309 provides multiple pages of discussion and guidance about end-of-life care including a discussion of the interaction and expectations of documentation with a hospice care provider. Dying is defined as a process and not a single event, and the focus of the guidance is to provide for the physical, social, and psychological needs of an end-of-life resident.

The hundreds of pages CMS issued on September 27 should prompt providers to undertake a careful review of the new expectations that interpret the participation regulations. With the

implementation of new guidelines effective in late November 2012 quick action will be required to assure that facility policies, procedures, and actions comply with the recent issuances and expectations.**

**Access links to the CMS S & C issuances.*