CLIENT ALERTS & INSIGHTS

New Regulation Imposes Requirements on Agreements between Nursing Homes and Hospice Partners

JULY 1, 2013

Nursing facilities and skilled nursing facilities (collectively, "Nursing Homes") will need to enter into written agreements, or revise existing agreements, with hospice providers, as well as implement new policies and procedures to meet the requirements of a final rule promulgated by the Centers for Medicare & Medicaid Services ("CMS"). The final rule, which can be found in the Federal Regulations at 42 CFR § 483.75(t), requires agreements between Nursing Home facilities and hospice providers to specifically address the roles and responsibilities of each entity and designate individuals responsible for oversight of related policies and procedures.

The new regulation, effective August 26, 2013, reflects CMS' commitment to the principles of President Obama's 2011 executive order. The purpose of the regulation is to improve quality and consistency of care between hospice providers and Nursing Homes in the provision of hospice care to Nursing Home residents by clarifying each entity's role in the patient's care. By requiring Nursing Homes and hospice providers to clarify their roles in a written agreement, the rule seeks to increase coordination of care, foster a stronger channel of communication, and eliminate duplicative, missing, or conflicting services. Therefore, both Nursing Homes and hospice providers need to be aware of the new requirements to ensure that their agreements and practices are in compliance.

New Requirements for Nursing Homes and Hospice Providers

The new regulation provides that a Nursing Home may either arrange for hospice services *through an agreement* or assist the resident in transferring to a facility that provides hospice services when the resident requests a transfer. If the resident and Nursing Home decide to arrange for hospice services in the Nursing Home, the Nursing Home must (1) ensure that the hospice services meet the professional standards and principles that apply to individuals providing services in the Nursing Home, in a timely manner, (2) designate a member of the Nursing Home's interdisciplinary team who works with the hospice provider and carries out specific duties, (3) 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 Nursing Home to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, and (4) have a written agreement, signed by authorized representatives of both the Nursing Home and the hospice provider, before hospice care is furnished to any resident.

Duties of the Nursing Home's Designated Interdisciplinary Team Member

The Nursing Home must designate a member of its interdisciplinary team to be responsible for working with hospice representatives to coordinate the care to the resident provided by the Nursing Home staff and hospice staff. The designated interdisciplinary team member *must* have a clinical background, function within their State scope of practice act, and have the ability to assess the

resident or have access to someone that has the skills and capabilities to assess the resident. The designated interdisciplinary team member is responsible for the following:

- Collaborating with hospice representatives and coordinating Nursing Home staff participation in the hospice care planning process
- Communicating with hospice representatives and other healthcare providers participating in the provision of care for the resident's condition, to ensure quality of care for the patient and family;
- Ensuring that the Nursing Home communicates with the hospice medical director, the patient's attending physician, and other practitioners participating in the provision of care to the patient as needed to coordinate the hospice care with the medical care provided by other physicians;
- Obtaining information from the hospice, including, but not limited to, the most recent hospice plan of care specific to each patient, the hospice election form and hospice medication information specific to each patient; and
- Ensuring that the Nursing Home staff provides orientation in the policies and procedures of the Nursing Home, including patient rights, appropriate forms, and record keeping requirements, to hospice staff furnishing care to the resident.

The final requirement is particularly important, as Nursing Homes will need to create a formal staff orientation program and should also do periodic trainings to ensure that all Nursing Home staff remains knowledgeable about new policies and procedures.

Requirements of the Written Agreement

The written agreement between the Nursing Home and hospice provider must, at a minimum, delineate:

- The services that the hospice will provide;
- Hospice's responsibilities for determining the appropriate hospice plan of care;
- The service the Nursing Home will continue to provide, based on each resident's plan of care;
- A communication process including how the communication will be documented between the Nursing Home and the hospice provider, to ensure that the needs of the resident are addressed and met 24 hours per day;
- A provision that the Nursing Home immediately notify the hospice about certain occurrences, such as clinical complications or the need to transfer the resident;
- A provision that hospice assumes responsibility for determining the appropriate course of hospice care;
- A provision that the Nursing Home must furnish 24-hour room and board care, meet the resident's personal care and nursing needs in coordination with the hospice representative, and ensure that the level of care provided is appropriately based on the individual resident's needs;

- A delineation of the hospice's responsibilities, including, but not limited to, providing medical direction and management of the patient, medical equipment, and counseling;
- A provision that when the Nursing Home personnel are responsible for administration of prescribed therapies, the Nursing Home personnel may administer the therapies where permitted by State law and as specified by the Nursing Home;
- A provision that the Nursing Home must report all alleged violations to the hospice administrator immediately when the Nursing Home becomes aware of the alleged violation; and
- A delineation of the responsibilities of hospice and the Nursing Home to provide bereavement services to Nursing Home staff.

Additional Information

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