

HCFA Focuses on Rights

Medicare hospitals face new regulations on patient's rights

By

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Today's healthcare providers must perform in increasingly complex regulatory and financial environment. The development of and adherence to compliance programs is necessary to guide providers through the myriad of fraud and reimbursement regulations with which they must comply. In addition, the reimbursement decreases brought about by the Balanced Budget Act of 1997 continue to stretch hospitals' financial resources.

In the midst of these challenges, the Health Care Financing Administration (HCFA) has promulgated additional regulations with which hospitals must comply: a Medicare condition of participation based on patients' rights.¹ Among the patients' rights advanced by HCFA, are the duty to provide patients with notice of their rights, ensuring patients' access to information in their clinical records and the right to be free of restraints and seclusion. The regulations place a significant responsibility on hospitals to develop and comply with policies and procedures pertaining to patients' rights.

Hospitals must carefully comply with the new patients' rights condition of participation. The regulations apply across a hospital's spectrum of post acute care services such as skilled nursing, rehabilitation and psychiatric units. While the Joint Commission on Accreditation of Healthcare Organizations has always required accredited hospitals to address patient rights, now a hospital's Medicare certification depends upon compliance with patients' rights.

Notice of Patients' Rights

One of the duties placed upon hospitals is providing patients with information concerning their rights. Medicare-participating hospitals are required to provide patients, whenever possible, with notice of the patient's rights before furnishing or discontinuing patient care. These rights include:

- The right to access emergency services and to be free from discrimination;
- The right to file a complaint;
- The right to informed consent;
- The right to formulate advance directives;
- The right to confidentiality;

¹ 42 C.F.R. §482.13.

- The right to actively participate in care decisions which includes the right to request or refuse treatment and the right to procure and donate organs;
- The right to privacy dignity; and,
- The right to safety and to be free from restraints and seclusion.

Particularly important among the rights listed above is the right to file grievances. Hospitals are required to have a procedure by which a patient or his or her representative may file grievances. The hospital grievance procedure must provide a mechanism for patients to file grievances, including identifying the party with which the grievance must be filed, and a process for the prompt resolution of grievances. Hospitals should have guidelines that demand the timely review of written and verbal complaints and require written responses regarding each complaint and how it was resolved.

Confidentiality

Hospitals already have the duty under their respective state laws to maintain patient confidentiality. However, HCFA also demands that patients have the right to the confidentiality of their clinical records. In addition, HCFA requires that hospital patients have the right to access information from their clinical records.

HCFA requires that patients be given access to the information within their clinical records within a reasonable period of time. Hospitals are forbidden from frustrating the legitimate efforts of patients to obtain their records and they are required to meet a patient's request for information as expeditiously as their records system will allow. HCFA realizes that the timing of a hospital's response to information requests depends upon factors such as the location of data, the urgency of the request, the record staff's workload and other factors.

Despite HCFA's flexibility in allowing hospitals to respond to requests in a "reasonable" rather defined time period, HCFA has advised that patients have options to report hospitals that they believe inappropriately delayed releasing clinical information. Such patients have the option of:

- Filing a grievance through the hospital's internal grievance process;
- Reporting difficulties to the state survey agency;
- Reporting difficulties to the hospital's accrediting body such as the Joint Commission on Accreditation of Healthcare Organizations; and,
- Pursuing remedies that exist under state law.

While a hospital may not try to frustrate a patient's efforts to obtain clinical records, HCFA allows a reasonable fee to be charged for the requested copies. The size of medical records often makes their duplication an expensive process particularly when on microfilm or a similar medium. Therefore, it is permissible under federal and many state laws to charge a reasonable fee for their duplication. HCFA has advised that hospitals should set their duplication charges according to state law if it addresses the copying of records. If state law is silent on the issue, the rate charged could reflect that charged by the local library, post office, or a local commercial copy center as a comparative standard.

Restraints and Seclusion

In its new condition of participation, HCFA stressed patients' right to be free of restraints. HCFA requires that patients undergoing acute medical and surgical care in a hospital have the right to be free from any restraints of any form that are not medically necessary and are used as a means of coercion, discipline, convenience or retaliation by staff members. HCFA does recognize that restraints are sometimes necessary in acute medical and surgical settings. However, HCFA expects hospital policies to require documentation to be in the chart that less restrictive measures were determined to be insufficient before restraints are used.

In addition to being utilized for the patient's well-being and where less restrictive interventions are ineffective, restraints may only be ordered by a physician or other licensed independent practitioner who is licensed under state law to order restraints. When a restraint is ordered, HCFA mandates that the following criteria must also be satisfied:

- The order for restraint must never be written as a standing order;
- The order must not be written on an as-needed basis;
- The order must be followed, as soon as possible, by consultation with the patient's treating physician if the restraint was not ordered by that physician;
- The order must be implemented in accordance with a written modification to the patient's plan of care;
- The order must be for the least restrictive restraint possible;
- The order must be implemented in accordance with safe and appropriate restraining techniques; and,
- The use of the restraint must be ended at the earliest time possible.

Once a patient has been restrained, his or her condition must be continually assessed, monitored and evaluated by the hospital's clinical staff. HCFA has not defined the frequency of patient evaluations or the intervention of the patient's treating physician. However, hospitals must ensure that physician involvement and patient assessments are performed on a timely basis as provided in the hospital's restraint usage policies and procedures. In addition, all staff members who have direct contact with patients, which encompasses a broad range of individuals, must receive ongoing education and training in the appropriate use of restraints and the hospital's restraint policies. Such training and competencies should be included in each employee's human resources and / or education file.

HCFA also addressed the use of restraints and seclusion for behavior management purposes. Restraints or seclusion may be used for behavior management only as an emergency measure. Such an emergency exists when a patient's unanticipated, severely aggressive or destructive behavior places the patient or other individual in imminent danger. In such instances, restraints or seclusion may be used as a temporary measure to protect the patient and others from harm.

Intervening with restraints or seclusion for behavior modification purposes involves the same requirements for using restraints in an acute medical and surgical settings. For

example, in both instances, the form of restraint must be the least restrictive possible and must be applied pursuant to a physician's order. However, HCFA has specifically defined the amount of time restraints or seclusion may be applied for behavior modification and the timeliness of a physician evaluation after an intervention has been made for behavior modification. HCFA requires that a physician or independent licensed practitioner must physically assess the patient within one hour of the initiation of the restraint or seclusion. In addition, restraint or seclusion orders for patients are limited to:

- A 4-hour interval for adults;
- A 2-hour interval for children ages 9 to 17; and,
- A 1-hour interval for children under 9 years of age.

Subsequent orders may be entered after the first interval of restraint or seclusion. However, a new order may be issued only after a physician sees and assesses the patient. In addition, the use of restraints or seclusion may not exceed a 24-hour period.

Conclusion

This article has served to elucidate several of the new patients' rights requirements with which hospitals must comply to maintain Medicare certification. Some of the regulations discussed in this article must be evaluated in conjunction with state laws. Hospitals should ensure that counsel considers both state law and the federal regulations before formulating their own policies and procedures regarding patients' rights.

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