

## **CMS Publishes Interim Final Hospice Interpretive Guidelines**

Article By:

Health Care

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The Centers for Medicare & Medicaid Services ("CMS") released an Advance Copy of the Hospice Interpretive Guidance ("Guidelines") to the state survey agencies on January 2, 2009. The Guidelines are considered interim since the final version is still in the internal clearance process; however, it is unlikely that the final interpretive Guidelines will differ significantly from the Advance Copy. The Guidelines, which will be included in Appendix M of the State Operations Manual, are intended to provide guidance to surveyors and clarify or explain the intent of the hospice Medicare conditions of participation ("CoPs"). Even though the Guidelines interpret and/or attempt to clarify certain provisions of the CoPs, they are not binding and do not replace or supersede federal statutes or regulations. The Guidelines do, however, provide insight into how hospices will be surveyed under the new CoPs.

After reading the procedures and probative questions in the Guidelines, it becomes apparent that the primary focus of the hospice survey is patient outcomes. For example, while the surveyors will ask you for a copy of the Notice of Rights and Responsibilities ("Notice") that you provide to your patients on admission, the determination of whether or not you comply with the notice requirements of 42 CFR§418.52(a) seems to be more dependent on how your patients respond to the probative questions asked by the surveyors during home visits than on the actual content of your Notice. The Guidelines suggest that the surveyors first ask the hospice patients interviewed (or their responsible parties) if you informed them of their rights and, if so, when and how. Your patients will also be asked to give examples of how their rights apply to the hospice care they are receiving. Clearly, your written Notice and verbal explanation of the Notice need to be given in a manner and language that the patient understands, as required by §418.52(a)(1). Otherwise, your patients may be unable to effectively respond to a surveyor's questions.

A successful hospice survey will be highly dependent on the effectiveness of the communication between your hospice and your patients, governing body, staff and contractors. The surveyors will ask how your governing body stays informed of ongoing operations, patient care issues, and quality assessment and performance improvement activities; how your RN coordinator ensures that all members of your interdisciplinary group are kept informed of your patients' and families' status; how you ensure that all contracted staff provide care in accordance with the hospice plan of care; how and when communication occurs between the hospice and contracted individuals or agencies; and how you monitor the care provided to your patients receiving short-term inpatient care.

Even the technical components of hospice contracts that we discussed in our November 2008 edition

of Hospice Endnotes are secondary to your outcomes. The probative questions in §418.112(c) related to the nine minimal provisions in agreements between hospices and nursing facilities do not focus on the language of the provisions but on other factors including how the facility will contact the hospice on a 24-hour basis, whether there have been instances when you were unaware of significant changes in your patient's condition and if there is any evidence that facility staff provided patient care exceeding that which a family member might provide at home. Nursing facility staff may even be interviewed by the hospice surveyors about how they communicate with your hospice if your patient is experiencing pain, how they monitor for the presence of adverse consequences of care and if they are aware of, and implement, interventions consistent with the hospice plan of care.

Not only should you ensure that you meet the many technical requirements of the CoPs, but you must also educate your governing body, staff and contractors of these requirements and coordinate all aspects of hospice care. Technical compliance alone may not be enough to ensure a deficiency-free survey if your outcomes do not have a positive effect on your patients and their families.

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