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In Seeking to Minimize Readmissions, Hospitals Must Remember Patient Choice Requirements

By: Carel T. Hedlund

Beginning October 1, 2012, hospitals that have a high percentage of patient readmissions within 30 days of discharge in three specific measures (acute myocardial infarction, heart failure and pneumonia) are subject to payment reductions. See "CMS Releases Final FFY 2013 IPPS Rule." Many hospitals are therefore exploring ways to ensure that patients comply with hospital post-discharge care plans and receive good care, in an attempt to ward off readmissions.

One potential way to do this would be to make sure that patients receive any required post-acute care services only from high-quality providers. Unfortunately from the perspective of readmission penalties, the Hospital Conditions of Participation (CoPs) place clear restrictions on the hospital's ability to steer patients to providers of post-acute care services that the hospital believes provide a high quality of care.

The CoP related to hospital discharge planning functions (42 C.F.R. § 482.43) requires that the hospital "must inform the patient or the patient's family of their freedom to choose among participating Medicare providers of posthospital care services and must, when possible, respect patient and family preferences when they are expressed. *The hospital must not specify or otherwise limit the qualified providers that are available to the patient.*" In addition, for those patients for whom skilled nursing facility (SNF) or home health agency (HHA) services are needed after discharge, the CoP provides that the hospital must provide the patient (or patient's agent) with a list of SNFs and HHAs from which the patient may choose. The CoP provisions thus prevent hospitals from controlling which post-acute care providers the patient may choose.

Ober|Kaler's Comments

Hospitals are now finding themselves caught in the tension between facilitating patient choice and wanting to control the quality of post-discharge care. Both the patient choice CoP provisions and the hospital readmissions penalty are creatures of statute. The requirement that hospitals not steer patients to any specific post-discharge provider and provide patients with a listing of available HHAs and SNFs was imposed by the Balanced Budget Act of 1997. The hospital readmissions reduction program is part of the Affordable Care Act. Until such time as Congress changes either of these provisions, hospitals will need to proceed with full awareness of the limits on their ability to influence post-discharge care.