DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-08-30

DATE: **August 1, 2008**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: 2008 Physician Fee Schedule Changes Affecting Survey & Certification

Memorandum Summary

On November 27, 2007, the Centers for Medicare & Medicaid Services (CMS) published revisions to payment policies under the Physician Fee Schedule. These changes affected the following CMS Conditions of Participation (CoPs):

485.58 CoP: Comprehensive rehabilitation program
485.711 CoP: Plan of care and physician involvement
485.635 CoP: Provision of services (CAH)

Background

The Centers for Medicare & Medicaid Services (CMS) annually publishes the Revision to Payment Policies under the Physician Fee Schedule. Generally the changes affect coverage and payment rules for Medicare providers and suppliers. In November 2007, the Revision to Payment Policies included several changes that directly affect some of our CoPs. The changes are not available in the current hard copy version of 42 CFR 430 to End publication and can only be found in the e-CFR which continually updates the various 42 CFR publications. The Web site address for the e-CFR is: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=99cb30ae8abf39bf15cb23db8df2c983&c=ecfr&tpl=/ecfrbrowse/Title42/42tab_02.tpl

In the meantime, we will highlight the changes to the regulations. These changes may or will affect the survey process and we don't want facilities to be found deficient in certain practices.

Discussion

42 CFR Chapter IV is amended as set forth below:

Comprehensive Outpatient Rehabilitation Facility (CORF) Services

§ 410.105 Requirements for Coverage of CORF Services.

§ 410.105(b)(3)(i) This section specifically states that Physical Therapy (PT), Occupational Therapy (OT), and Speech Language Pathology (SLP) services may be furnished away from the premises of the CORF ***including the individual's home*** when payment is not otherwise made under Title XVIII of the Act.

This clarifies § 485.58(e)(2). In addition to the single home evaluation visit (the patient must be present for this visit), outpatient therapy services may be provided in the patient's home as well as other off-site locations. There is no penalty for the CORF if it is found to be providing outpatient therapy services, in the home, as long as the patient is not also receiving services under the Home Health benefit. If the surveyor discovers that the patient is also receiving home health services, the surveyor should contact the regional office (RO). The RO should, in turn, contact the Fiscal Intermediary/Medicare Administrative Contractor.

§ 410.105(c)(2) has changed the time that a plan of treatment must be reviewed. The plan must be reviewed **every 60 days for respiratory therapy and every 90 days for PT, OT, and SLP services effective January 1, 2008.**

This impacts **§ 485.58(b)(4)** which states the plan of treatment will be reviewed every 60 days for all services. Therefore, any therapy services that were provided prior to January 1, 2008, must be covered by a 60-day plan of treatment. The surveyor may cite the facility if it does not have 60-day plans of treatment prior to January 1st. *This year we are attempting to have the CoP modified to conform with the requirements for payment. If we are not successful, this will create a problem since CMM will pay the facility for a 90-day plan of treatment (the providers are all aware of the new time frames) but in order for the facility to meet § 485.58 (b)(4) the plan of treatment must be recertified every 60 days. The surveyor will be the one who must explain that the provider must meet all CoPs regardless of the newly instituted timeframes.*

Part 424—Conditions for Medicare Payment

§ 424.24 Requirements for medical and other health services furnished by providers under Medicare Part B. ***The following requirements apply to rehabilitation agencies (OPTs)***

§ 424.24(c)(2) *Timing*. The initial certification must be obtained as soon as possible after the plan is established.

This means the surveyor should find a physician's signature in the clinical record *at least once* within the 90-day certification period *or as often as the patient's condition changes.* The signature indicates the doctor is aware of the plan of care and s/he approves of the services being provided. The physician does not need to sign the actual plan of care but a plan of care must be located in the clinical record. If the physician's signature is not in the clinical record *at least once* within the 90-day certification/recertification period, the surveyor should cite the facility.

This impacts **§ 485.711(b)(3)** which currently says for Medicare patients, the plan will be reviewed every 30 days by the physician, nurse practitioner, clinical nurse specialist, or physician assistant. Any therapy services provided prior to January 1, 2008 require a 30-day certification/recertification period. The surveyor may cite the facility if it does not have those 30 day plans in place prior to January 1st. *We are attempting to change this regulation requirement in order to conform the CoPs with the requirements for payment. If we are unsuccessful, the surveyor must enforce the 30-day plan of treatment.*

PART 485—Conditions of Participation: Specialized Providers

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

§ 485.635 ***Provision of services*** is amended with the addition of a new standard (e) which reads as follows:

§ 485.635(e) ***Standard: Rehabilitation Therapy Services***. Physical therapy, occupational therapy, and speech-language pathology services furnished at the CAH, if provided, are provided as direct services by staff qualified under State law, and consistent with the requirements for therapy services in 409.17.

The distinction between the inpatient rehabilitation facility (IRF) and CAH Rehab distinct part unit (DPU) is that IRFs are allowed to provide therapy services under arrangement/contract while the CAH Rehab DPU must provide the rehab services as direct services (no contracts). If the surveyor finds rehabilitation therapists who are working for the CAH Rehab DPU under contract, this standard should be considered out of compliance and should be cited.

Please contact Georgia Johnson at 410-786-6859 or Georgia.Johnson@cms.hhs.gov if you have questions or concerns.

Effective Date: The information contained in this memorandum is applicable immediately for all healthcare facilities that rely on CMS survey and certification work. The State Agency should disseminate this information within 30 days of the date of this memorandum.

Training: This information should be shared with all appropriate survey and certification staff, surveyors, and the affected provider community.

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management