

Center for Medicaid and State Operations/Survey and Certification Group

DATE: July 13, 2007

Ref: S&C-07-28
(revised 7-25-07)

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Enforcement of the Requirement to Provide Medicare Beneficiaries Notice of Their Rights, Including Discharge Appeal Rights.

***** This memorandum includes updated standardized notices, "Important Message from Medicare" (in English and Spanish) originally included in the memorandum released July 13, 2007. It does not represent any significant content changes, just new formatting. It should replace that memorandum. *****

Memorandum Summary

- The final rule governing beneficiary notification of their discharge appeal rights, published on November 27, 2006, requires updated enforcement guidance, effective July 2, 2007.
- For hospitals, enforcement of the new notice requirements falls under the Patients' Rights Condition of Participation (CoP) at 42 CFR 482.13.
- For critical access hospitals (CAHs), enforcement of the new notice requirements falls under the Compliance with Federal, State, and local laws and regulations CoP at 42 CFR 485.608(a).

The final rule governing notification to Medicare beneficiaries of their hospital and CAH discharge appeal rights, was published on November 27, 2006 (See Federal Register, 71 FR 68708). Under the final rule, 42 CFR 405.1205(b) requires that hospitals and CAHs provide each Medicare beneficiary who is an inpatient a standardized notice, the Important Message from Medicare (IM), within two days of their admission. The template for the IM is enclosed with this letter. The rule also requires that the IM be signed and dated by the patient when it is delivered to the beneficiary at or near admission. In addition, the rule at 42 CFR 405.1205(b)(3) requires that hospitals and CAHs present a copy of the IM to beneficiaries as far as possible in advance of their discharge, but not more than two calendar days before discharge. In the case of a short inpatient stay, however, where delivery of the IM is within two calendar days of the date of discharge, the second delivery of the IM is not required.

In addition, 42 CFR 489.27(b) requires hospitals and CAHs to demonstrate compliance with this requirement, cross-referencing the requirements at 42 CFR 405.1205.

Enforcement of the discharge notice requirement is linked to the Patients' Rights CoP for hospitals and the Compliance with Federal, State, and local laws and regulations CoP for CAHs. The Patient's Rights CoP for hospitals at 42 CFR 482.13(a)(1) requires hospitals to inform each Medicare beneficiary of their rights as a patient prior to providing or discontinuing hospital care. The CoP at 42 CFR 485.608 requires that the CAH and its staff be in compliance with applicable Federal, State, and local laws and regulations.

Beginning July 2, 2007, the compliance of hospitals and CAHs with the new, more specific, discharge notice requirements of 42 CFR 489.27 and 42 CFR 405.1205 is to be assessed when surveying hospitals for compliance with the Patients Rights CoP and CAHs for the Compliance with Federal, State, and local laws and regulations CoP. The interpretive guidelines in the State Operations Manual (SOM) for the Patients' Rights CoP for hospitals and the Compliance with Federal, State, and local laws and regulations CoP for CAHs are being amended to reflect the regulatory requirements governing notification of Medicare beneficiaries, who are inpatients, of their discharge appeal rights.

Surveyors must verify that the hospital/CAH has appropriate policies and procedures in place to ensure that Medicare beneficiaries receive timely notice of their inpatient rights at admission, and if applicable, upon discharge. In addition, surveyors must review selected Medicare patient records to confirm that the records contain documentation verifying timely delivery of the IM, including, where applicable, delivery of a follow-up copy of the IM. Surveyors may also interview hospital/CAH staff to assess their knowledge and understanding of the IM delivery requirements, including the hospital's/CAH's process for delivering the IM and obtaining signature from the patient. Surveyors may also interview patients to verify that the hospital/CAH is providing Medicare beneficiaries with the IM in compliance with the regulatory requirements.

For questions regarding enforcement of the requirements for hospitals under the Patients' Rights CoP, please contact David Eddinger at 410-786-3429 or David.Eddinger@cms.hhs.gov. For questions regarding enforcement of the requirements for CAHS under the Compliance with Federal, State, and local laws and regulations CoP, please contact Cindy Melanson at 410-786-0310 or Cindy.Melanson@cms.hhs.gov. Should you have any other questions regarding the content of this letter, please contact Aviva Walker-Sicard at 410-786-8648 or Aviva.walker-sicard@cms.hhs.gov.

Effective Date: July 2, 2007. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

Training: The information contained in this letter should be shared with all survey and certification staff, their managers, and the State/RO training coordinators.

/s/
Thomas E. Hamilton

Enclosures

cc: Survey and Certification Regional Office Management