

Skilled Nursing Regulatory Update from LeadingAge Annual Meeting

Changes to Nursing Home Compare

On October 23, CMS implemented 2 changes to Nursing Home Compare. The first was the consumer alert icon, designed to alert consumers to nursing homes that have been cited for abuse. LeadingAge has advocated against the icon, as it is misleading to consumers and does not provide adequate information about the abuse citations in question. CMS maintains that the intended message of the icon is, “Stop and ask questions.” Mr. Shulman further referred to resources CMS has provided to consumers who may be living in or considering a facility with a consumer alert icon.

CMS has no plans to revise the icon to distinguish between self-reported incidents and situations in which abuse was not appropriately addressed by the nursing home. As Mr. Shulman stated, “Abuse is abuse.” Nursing homes that receive the icon have been cited as noncompliant with the requirement to protect residents from abuse, neglect, and exploitation. As reporting is a separate requirement, nursing homes that “do the right thing” by complying with other requirements of abuse prevention including reporting, investigating, and preventing further abuse will see this compliance reflected in minimized harm and related enforcement remedies.

Other October changes to Nursing Home Compare included the removal of 2 quality measures related to pain (short-stay and long-stay measures of residents who report moderate to severe pain). CMS removed these measures due to concerns that providers may inappropriately prescribe opioid pain medications in order to preserve quality measure ratings. With the removal of these 2 measures, cut points have been adjusted.

In the future, providers can expect to see staff turnover and staff tenure reported on Nursing Home Compare. CMS has not announced a date for the addition of this information but confirmed that they will begin reporting. There is also the potential for reporting of additional staff, such as the Administrator or Medical Director, though no definite plans have been announced for this addition. CMS stated that with the implementation of PBJ over the past few years, they now have access to objective data regarding staffing that they are evaluating to best determine next steps. CMS is also interested in incorporating “the resident voice” into Nursing Home Compare but have not identified plans for moving forward at this time.

Patient-Driven Payment Model (PDPM)

PDPM became effective October 1. Though assessment schedules changed drastically under PDPM, OBRA assessment requirements have not been impacted. Mr. Shulman referred providers to Chapter 2 of the Resident Assessment Instrument (RAI) Manual for more information. Recognizing that PDPM is new territory for both providers and surveyors, surveyors are instructed to consider the overall picture of whether the residents’ needs are being met and whether they are able to attain or maintain their highest practicable level of well-being. CMS will also be looking to quality measures such as hospital readmissions and functioning to tell what’s happening with PDPM.

Regulations and Guidance

The question on everyone's mind: When is Phase III guidance coming out? CMS has released no anticipated dates or timelines but reiterates that with or without guidance, providers are expected to comply with all Phase III requirements. Though surveyors and providers may struggle with some of the nuances of requirements without guidance, CMS expects compliance with the more clear-cut aspects of requirements. For example, all nursing homes will be expected to have designated an individual as the Infection Preventionist. Mr. Shulman urged providers who have not yet done so to assign this role and complete the CMS/CDC Infection Prevention training available online.

Another aspect of regulation that CMS considers to be clear despite the lack of guidance relates to arbitration agreements. The final rule released in July stated explicit provisions including the expectations that arbitration agreements cannot be a condition of admission, readmission, or continued stay and may not include language that in any way discourages contact with officials, surveyors, or ombudsmen. Further, residents must clearly understand what they are signing and their rights around this process, and nursing homes must obtain documentation of disputes resolved through arbitration for a period of 5 years.

Substance Abuse and Mental Health

CMS identifies substance abuse and mental health as one of the most common challenges experienced by providers. Emphasis on these issues is likely to intensify. CMS warns that being the good steward who accepts these individuals into the nursing home in order to avoid prolonged hospitalization due to lack of appropriate programs does not relieve providers from their responsibility to secure appropriate resources to successfully care for these individuals. In such cases, CMS will be evaluating the information that the nursing home received from the discharging hospital or provider, any changes in status that may have occurred after admission to the nursing home, and what actions the nursing home has taken to appropriately address the resident's needs.

Mr. Shulman acknowledged that CMS "needs to provide better guidance" related to residents with substance abuse and mental health issues and recommended that providers work to identify triggers and patterns of behavior that may indicate substance abuse or mental health issues. Identify partnerships with local clinics or qualified professionals for consultation and staff training. Mr. Shulman also recommended assessing existing activities programming. Activities that are popular among the 85-year old, non-substance using crowd may not appeal to or provide enough diversion to support this particular population.

State Survey Agency Oversight

CMS has been working to improve State Survey Agency performance and recently released updated guidance on the State Performance Standards System (SPSS). This system measures state survey agencies' performance on a number of measures including timely completion of surveys, consistency in citations, and documentation of deficiencies. CMS's goal is for state survey agencies to consistently identify and cite noncompliance in the same way across the country. While CMS does not expect flat rates of citation nation-wide, they do expect to address "outliers" (e.g., states that fall on the extreme ends of citation rates). The

standardization of the survey process in 2017 was a step in this direction. Other activities include the updates to Appendix Q guidance for citing immediate jeopardy (IJ) and the implementation of the IJ template. Mr. Shulman urged providers to notify CMS immediately through LeadingAge if cited for IJ without the IJ template. CMS is also monitoring state survey agencies' rates and quality of reporting to law enforcement for crimes against elders. Mr. Shulman referred several times throughout his presentation to CMS's 5-Point Plan to strengthen nursing homes, first introduced in Administrator Seema Verma's April 15 CMS blog, stating that the blog provides a good roadmap for where CMS is headed. Mr. Shulman also acknowledged the considerable impact of recent attention from the Government Accountability Office and Office of Inspector General. LeadingAge will continue to monitor activities from these 2 offices in order to anticipate potential nursing home policy changes.