HHA Survey and Enforcement Regulations

Implementation of Sanctions in Home Health

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Survey and Certification Group
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HHA Alternative Sanctions

- Legislated as part of OBRA ‘87
- Survey and Enforcement Requirements for Home Health Agencies, 42 CFR 488, Survey, Certification and Enforcement Procedures
Regulation

- Subpart I – Survey and Certification of Home Health Agencies
  - Long standing CMS survey policy
  - Informal dispute resolution (IDR)
- Subpart J – Alternative Sanctions for Home Health Agencies With Deficiencies
  - Civil Money Penalties (CMP)
  - Suspension of payment for new admissions (SPNA)
  - Directed in-service (DIS)
  - Directed plan of correction (DPOC)
  - Temporary management (TM)

CMS Provider Expectations

- Providers remain in substantial compliance with Medicare program requirements as well as State law
  - Emphasis on continued rather than cyclical compliance
  - Enforcement mandates that policies be established to correct deficient practice and correction is lasting
  - HHAs take the initiative and responsibility for monitoring performance to sustain compliance
CMS Provider Expectations (cont.)

- Deficiencies will be addressed promptly
  - The standard is substantial compliance
  - Alternative sanctions could be imposed by CMS in lieu of immediate termination
  - Can remain in place for up to six months
- Individuals under the care of the HHA receive the care and services they need to attain and maintain their highest practicable functional ability

CMS HHA Enforcement Policy

- Based on NH experience
- Adding enforcement chapter, Chapter 9, to SOM (HHA specific)
- Revisions completed for Appendix B, HHA Survey Protocols; and SOM, Chapter 2, HHA sections (2180-2202)
- Tracking system, ASPEN (AEM) to be revised by contractor (Alpine), Spring 2014
SA and RO Workload

• Considerations:
  – Decision to impose sanctions
  – Timing of imposition of sanctions
  – SA/RO communications
  – Tracking
  – New IDR process for HHAs
  – Implementation dates
  – Training

Effective Dates

• Effective July 1, 2013
  – Subpart I – Survey process/protocols, definitions, except for Informal Dispute Resolution (IDR)
  – Subpart J - Basis, definitions, general provisions, factors to be considered, temporary management, directed in-service, directed plan of correction

• Effective July 1, 2014
  – Informal Dispute Resolution (IDR)
  – Civil Money Penalties (CMPs)
  – Suspension of Payment for New Admissions (SPNA)
HHA Survey and Certification

• Subpart I – Survey and Certification of Home Health Agencies
  – 488.700 – Basis and scope
  – 488.705 – Definitions
  – 488.710 – Standard surveys
  – 488.715 – Partial Extended surveys
  – 488.720 – Extended surveys
  – 488.725 – Unannounced surveys
  – 488.730 – Survey frequency and content
  – 488.735 – Surveyor qualifications
  – 488.740 – Certification of compliance or noncompliance
  – 488.745 – Informal Dispute resolution (IDR)

Additions/Changes

• Abbreviated standard survey – less than a standard survey, focused on issues
  – Complaints
  – Change of ownership
  – Reactivation of billing privileges
Additions/Changes (cont.)

• Extended survey – “additional” conditions examined rather than “all” conditions
  – Follow HHA protocols concerning related conditions
• State IDR process for HHAs
  – Needs to be developed in every State
  – Consistent with Nursing Home IDR process
  – For condition level deficiencies only
  – Request submitted with Plan of Correction

Abbreviated Standard Survey

• Complaint survey
  – Focused on allegations in complaint
• Change of ownership
  – Focused on areas of management, supervision and operations
• Reactivation of billing privileges
  – Focused on operations, coordination/quality of care, plan of care
Definitions for HHAs

- **Condition of Participation**
  - Requirement to participate in Medicare Program

- **Standard**
  - Subpart of a Condition
  - Continue to participate in the Medicare program with an acceptable plan of correction

- **G-tags**
  - Condition/Standard – identified in Appendix B of the State Operations Manual

HHA Survey Protocols 101

- **Standard survey**
  - Reviews the Level 1 standards - Most directly related to delivery of high quality patient care
  - Interviews, record reviews, home visits
  - Includes selected standards within 9 of the 15 Conditions of Participation for HHAs

- **Partial Extended Survey**
  - At a minimum, reviews the Level 2 standards
  - Any other standards in same or other conditions

- **Extended survey – additional conditions**
Extended Survey

• Reviews additional conditions related to deficiencies cited
• May be conducted at any time: at discretion of State Agency (SA) or CMS
• Must be conducted when any condition level deficiency is cited
  – Reviews policies, procedures and practices that resulted in substandard care

Home Health Agency (HHA) Survey Protocols

*Refer to Appendix B for full regulatory text and interpretive guidelines

All potential deficient practices must be investigated and cited if confirmed, whether or not directed by the HHA.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Level I (Highest Priority)</th>
<th>Additional Information</th>
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<tbody>
<tr>
<td>OMB2 CAF 484.49 Patient Rights</td>
<td>Expected outcomes for investigation to include:</td>
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  - Patient complaints are documented and investigated; 
  - Patients are involved in developing the care plan. |
| OMB2 CAF 484.49 Patient Rights | | 
  - The home health agency (HHA) must investigate complaints and document both the existence of the deficiency and the resolution of the complaint. |
| OMB2 CAF 484.49 Patient Rights | | 
  - The patient or the patient's legal representative must be informed of the right to participate in care planning; 
  - The HHA must provide patient education. |

Primary Investigation Methods/Source

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<th>Method</th>
<th>Description</th>
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  - Interview with patient and legal representative; 
  - Interview with physician or other licensed practitioner. |

May be conducted at any time: at discretion of State Agency (SA) or CMS.

Must be conducted when any condition level deficiency is cited.

Reviews policies, procedures and practices that resulted in substandard care.
Citation Guidance

- Standard level - Any findings at Level 1 or Level 2 standards warrant a standard level citation
- Condition level
  - Follow survey protocols in Appendix B
  - When serious findings are found during survey unrelated to Level 1 or Level 2 standards
  - When Immediate Jeopardy is cited

When Condition Level Deficiency Exists

- Current process for substandard care = Termination Track – 90 days
- Any condition level deficiency will start an enforcement case in AEM
- Decision to impose sanctions made between SA and RO
Deemed Agencies

- Alternative Sanctions only apply to deemed HHAs when a condition level citation is found during a SA survey for a complaint or validation survey
- Deemed status is removed until HHA is in substantial compliance or is terminated

HHA Alternative Sanctions

- Subpart J – Alternative Sanctions for Home Health Agencies With Deficiencies
  - 488.800 – Statutory basis
  - 488.805 – Definitions
  - 488.810 – General provisions
  - 488.815 – Factors to be considered in selecting sanctions
  - 488.820 – Available sanctions
  - 488.825 – Action when deficiencies pose immediate jeopardy
HHA Alternative Sanctions (cont.)

- Subpart J – Alternative Sanctions for Home Health Agencies With Deficiencies (cont.)
  - 488.830 – Action when the deficiencies at condition-level but do not pose immediate jeopardy
  - 488.835 – Temporary management
  - 488.840 – Suspension of payment for all new admissions
  - 488.845 – Civil money penalties
  - 488.850 – Directed plan of correction
  - 488.855 – Directed in-service training
  - 499.860 – Continuation of payments to an HHA with deficiencies
  - 488.865 – Termination of provider agreement

Why Alternative Sanctions?

- Up until now – the only course of action for substandard care – immediate termination track (90 days)
- Alternative sanctions offer incentive to come back into compliance quickly in a time period not to exceed 6 months
- Continue until compliance attained or HHA terminated
Factors in Selection of Sanctions

- Seriousness – IJ or Non-IJ
- The nature, incidence, manner, degree, and duration of the non-compliance
- Overall compliance history, presence of repeat deficiencies
- Extent to which the deficiency is related to failure to provide quality care
- Extent to which agency is part of larger organization with performance problems
- Indication of system-wide failure to provide quality care

Alternative Sanctions

- For condition level deficiencies only
- Sanction(s) imposed in lieu of immediate termination
- RO imposes sanctions after discussion with SA – not a provider decision
- Concept of “repeat deficiency”
  - Same as, or similar to a deficiency cited on last survey
  - To be considered for condition level citation
Alternative Sanctions (cont.)

- Civil Money Penalties (CMPs)
- Can be per day or per instance
- Per instance means condition level deficiency corrected during the survey
- CMPs cannot exceed $10,000 a day
- Guidance for amounts included

Alternative Sanctions (cont.)

- CMPs
  - Upper range – Immediate Jeopardy ($8,500 - $10,000)
    - Harm
    - Potential for harm
    - Isolated event of non-compliance in violation of HHA policy
Alternative Sanctions (cont.)

• CMPs
  – Middle Range - Non-IJ, patient care ($1,500 – $8,500)
    • Original survey
    • First revisit survey
    • Second revisit survey
    • Repeat citation for patient care
    • Initial citation for patient care
    • Structure/process patient care

Alternative Sanctions (cont.)

• CMPs
  – Lower range - Non-IJ, non patient care ($500 - $4,000)
    • Original survey
    • First revisit survey
    • Second revisit survey
    • Initial citation for structure or process
    • Repeat citation for structure or process
Alternative Sanctions (cont.)

- CMPs
- Can be increased or decreased based on:
  - Severity
  - Ability or willingness to correct
  - Incremental improvements due to substantial and/or sustainable improvements on revisits

Alternative Sanctions (cont.)

- Suspension of payment for new admissions
  - Does not affect patients currently under care
  - Payments to new patients resume when condition level deficiency corrected
- Temporary management
- Directed plan of correction
- Directed in-service
Notices

- IJ situations
  - 2 day notice
- Non IJ
  - 15 day notice
- Effective last day of survey

Substantial Compliance

- In compliance with all Conditions of Participation
- May still be in substantial compliance with standard level deficiencies
Questions

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• Submit questions to:
  hhasurveyprotocols@cms.hhs.gov