

New CMS Patient Notification Requirements for Hospitals -- Increasing Patient Awareness and Safety

By:

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Overview

On August 22, 2007, the Centers for Medicare and Medicaid Services (CMS) published in the Federal Register a final rule to update the hospital inpatient prospective payment system (IPPS) for federal fiscal year (FY) 2008. This rule finalized new patient notification obligations that will impact many hospitals.

Included in the final rule are two significant disclosure provisions that will require many hospitals to provide patients with information relating to (1) physician ownership of hospitals, and (2) the presence (or lack thereof) of a physician on site at the hospital 24 hours a day, 7 days a week and processes for handling medical emergencies when a physician is not present on-site.

These proposed changes, although potentially burdensome to affected hospitals, are indicative of the agency's response to perceived concerns regarding specialty hospital development. These proposed changes also illustrate CMS's resistance to differentiating between general acute care hospitals and specialty hospitals when making policy. Accordingly it is essential for all hospitals to be aware of the new patient disclosure requirements, which were implemented on October 1, 2007 to ensure patient awareness and safety.

Disclosure of Physician Ownership in Hospitals

Consistent with CMS's Report to Congress on Physician-Owned Specialty Hospitals, the final rule requires all physician-owned hospitals to provide patients with written notice of such physician ownership. Physician-owned hospitals must also offer to provide a list of physician owners upon patient request.

A "physician-owned hospital" is defined to include "any participating hospital (as defined in 42 C.F.R. § 489.24) in which a physician or physicians have an ownership or investment interest." The ownership or investment interest may be through equity, debt, or other means, and includes an interest in an entity that holds an ownership or investment interest in the hospital, such as a holding company or health system. However, the final rule excludes from the definition of "physician-owned hospital" any hospital in which physician

ownership is limited to holding publicly traded securities or mutual funds that satisfy the requirements of the exceptions under 42 C.F.R. §§ 411.356(a) or (b).

New Physician Owned Hospital Notification Requirements

- 1. Hospitals must disclose to patients in writing that the hospital is physician owned.**
- 2. If patient requests, hospital must disclose the names of physicians that have an ownership or investment interest.**
- 3. Physicians who are members of the hospital's medical staff must disclose ownership to all patients they refer to the hospital.**

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The final rule requires that all patients must be able to reasonably understand the information disclosed. However, CMS has not provided guidance as to how this requirement will be interpreted. Additionally, CMS is mandating that the notice be provided at the beginning of a patient's hospital stay or outpatient visit. In other words it is necessary to provide notice upon the provision of a package of information regarding scheduled preadmission testing and registration for a planned hospital admission for inpatient care or outpatient service (i.e. admission packet).

In the final rule CMS rejected commenters' requests to require the notice to be given to patients at the time of scheduling because CMS viewed such a requirement as impractical since most scheduling of inpatient or outpatient services is performed by a staff member in the physician's office, rather than by the patient. However, CMS encourages hospitals to provide the required notice at the time of scheduling in instances where the scheduling is done by the hospital and the patient together.

Additionally, CMS has declined to require hospitals to disclose all physician compensation arrangements (such as salaries, bonuses, medical directorships and consulting arrangements) with physicians who refer to the hospital. Rather than focus on detailed financial arrangements, CMS expressed its desire to focus the disclosure requirements on hospitals whose ownership and investment interests are most relevant to patients in deciding whether and where to seek medical treatment. CMS determined that the additional financial arrangement information would offer little additional benefit to patients in making such decisions and may unnecessarily burden physicians and hospitals.

CMS also declined to establish a specific timeframe for a hospital to provide a list of physician owners upon patient request. CMS rationalized that it is important for hospitals to have flexibility regarding the manner and form by which they meet this requirement. However, CMS indicated that hospitals are expected to make the list available “at the earliest possible opportunity” following a patient’s request.

The new ownership disclosure requirements apply to **all** physician-owned hospitals, and not just specialty hospitals. CMS has declined to establish a *de minimus* level of physician ownership or investment below which disclosure would not be required. Accordingly, all hospitals in which a physician or physicians have an ownership or investment interest are required to comply with the disclosure obligations, which took effect on October 1, 2007.

In order to enforce these disclosure requirements, CMS amended the provider agreement regulations to permit CMS to deny a provider agreement to a hospital that does not have the patient notification procedures in place and to terminate the provider agreements of physician-owned hospitals if the hospital fails to comply with the new disclosure requirements.

Patient Safety and Emergency Response Capability Notification

Physician-owned specialty hospitals also have come under fire for not having adequate emergency response capabilities. Recently, this perceived deficiency has been the subject of considerable congressional scrutiny following several patient deaths, most recently in Texas, in physician-owned specialty hospitals that in part were due to the hospitals’ inability to adequately respond to deteriorating and emergent situations.

In response to concern regarding hospitals’ capacities and processes for handling medical emergencies, CMS has also finalized a new requirement that **all hospitals** (including critical access hospitals) furnish all patients written notice at the beginning of their hospital stay or outpatient service if a doctor of medicine or a doctor of osteopathy is not present in the hospital 24 hours per day, 7 days per week. This requirement is applicable to all hospitals, not just physician-owned hospitals. Thus, any hospitals currently not providing 24/7 physician coverage must disclose this information to all patients upon admission.

In addition, hospitals must describe how they will meet the medical needs of any patient who develops an emergency medical condition at a time when no physician is present in the hospital. Again, these disclosure requirements are not limited to physician-owned hospitals.

Emergency Response Capability Notification Requirements

- 1. All hospitals must provide notice to all patients at the beginning of a hospital stay or outpatient service if a doctor of medicine or osteopathy is not present in the hospital 24 hours per day, seven days a week.**
- 2. Hospitals must describe in written form how they will meet the medical needs of any patients who develops an emergency medical condition at a time when no physician is physically present at the hospital.**

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Like the physician ownership disclosure requirements, this required notice regarding physician presence and processes for handling medical emergencies must be provided to all patients at the beginning of their hospital stay or outpatient visit (i.e., upon provision of a patient admission packet and registration for a planned hospital admission for inpatient care or outpatient service).

Conclusion

As evidenced by these new patient notification rules, CMS has focused on increasing patient access to information for the purposes of making health care decisions rather than increasing hospital obligations relating to emergency situations and patient safety.

However, the current regulatory environment is moving toward strengthening requirements for emergency situations that arise in hospitals. CMS has recognized that even hospitals with emergency departments and physicians on-site around the clock may encounter medical emergencies that are beyond the scope of practice of the clinical personnel onsite.

Thus, CMS has signaled that it is considering further changes to strengthen current requirements for emergency response capability in hospitals with or without emergency departments. CMS is contemplating requirements concerning the type of clinical personnel that must be present at all times in hospitals, the competencies such personnel must demonstrate, the type of emergency response equipment that must be available, and whether hospitals must operate 24 hours per day, 7 days per week. It is essential for all hospitals to ensure compliance with these new notification requirements and to stay tuned for further regulation related to emergency services in the future.

About the Author:

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