

January 7, 2015

The Honorable Marilyn Tavenner
Administrator
Center for Medicare and Medicaid Services
Via electronic submission at www.regulations.gov

RE: CMS-3819-P

Dear Ms. Tavenner:

I am writing on behalf of the members of the Granite State Home Health Association (GSHHA) to comment on the proposed rule CMS-3819-P, *Medicare and Medicaid Program: Conditions of Participation for Home Health Agencies*.

General Comments

New Hampshire's Medicare-certified home health agencies are pleased that CMS has proposed updating the Home Health Conditions of Participation (COPs), and especially appreciate the patient-centered tone of the revised COPs. As with any major revision, these COPs will require much effort by home health agencies to review their internal policies and procedures and make the necessary adjustments to comply with the new COPs. **We respectfully ask CMS to allow ample time prior to enforcement of the revised COPs, and suggest that sections of the COPs be phased-in over a multi-year period.**

Patient Rights

We have several suggestions related to the Section 484.50 on patient rights.

- We agree that patients should receive information regarding their rights in a language and manner the individual understands. **We encourage CMS to develop uniform patient rights materials in the most common languages used by Medicare beneficiaries**, similar to materials developed by the CDC.
- **We agree with the statement that patients "have a right to be informed of the HHA's policies for admission, transfer or discharge in advance of the provision of care."** However, we urge **CMS to clarify this statement**. The rule is not clear whether this means that agencies *must provide all patients with these policies*, or if the agency may simply inform the patient that *they may request these policies*. We recommend the latter, since providing written copies of lengthy policies is expensive, cumbersome and generally unnecessary in most situations.

- **We are especially concerned about 484.50 (d) (5) (i – iv) regarding “discharging for cause.” We believe that “disruptive, abusive or uncooperative” limits the reasons for which a home health agency can discharge a patient.** There are countless situations that arise that can jeopardize the ability of HHA personnel to provide care or threaten the safety of personnel in the home. These situations are often subject to interpretation. **Requiring an agency to “make efforts to resolve the problems presented by the patient’s behavior, the behavior of other persons in the patient’s home, or situation” is reasonable in most, but not all, situations.** If there is drug-dealing in a patient’s home, or a meth lab in a back room, what should an agency do to resolve this, short of getting out of the home immediately and calling law enforcement?
- When it comes to reasons for discharging patients, the Granite State Home Health Association is familiar with difficulties of finding a balance between patient rights and HHA personnel safety. In 2013, we worked with home health providers, consumer rights organizations, the NH Department of Health and Human Services, and the NH Legislature to craft legislation to clarify New Hampshire’s home care clients’ bill of rights law and create a new law regarding home health discharges. The resulting legislation, (NH Senate Bill 87, 2013) met with approval from all parties involved and took effect on January 1, 2014. **We encourage CMS to review [NH RSA 151:21b](#) and [NH RSA 151:26a](#) as a way to inform revisions to this COP standard.**

Organization and Administration of Services


We urge CMS to reconsider the requirement that a “qualified licensed physician or registered nurse must provide oversight of all patient care services and personnel.” This requirement fails to take into account that there are other eminently qualified personnel, such as rehabilitation therapists and medical social workers who have the experience and knowledge to oversee multi-disciplinary clinical teams. In fact, there are several agencies in New Hampshire that have such personnel in the home health clinical director role.

Clinical Records

We recommend that CMS eliminate the requirement that home health agencies send discharge or transfer summaries to healthcare facilities within two days. In many cases, an agency may not even know within that time frame that a HHA patient was admitted to a facility. If CMS continues to include this requirement, we recommend that it be limited to “*planned* discharges to receiving facilities”, and that the timeframe be extended beyond two days.

Thank you for the opportunity to provide comments.

Respectfully,



Gina Balkus

Chief Executive Officer