Health Dimensions Group Analysis of CMS Clarification Email
Regarding Discharge Planning Rules & Preferred Network Designations
December 6, 2019

In a recent interpretation from CMS (attached below), the agency has moved from a position of "no list of preferred providers shall be developed" to the possibility of including hospital-designated preferred providers subject to a three-prong test described below. CMS' response to an inquiry about inclusion of preferred network designation focused on the requirements to provide a list of post-acute care (PAC) providers, as well as the freedom of choice requirement.

In order to share preferred provider status, it appears that the hospital must meet three prongs:

1. All PAC providers presented to the patient must meet the needs and preferences of the patient
2. All PAC providers presented to the patient must have quality and resource data that are relevant and applicable to treatment preferences
3. Given #1 and 2 above, it would be acceptable to identify certain PAC providers as a "preferred provider" as long as the list provided to patients is not exclusively comprised of those preferred providers.

CMS' interpretation seems closer to statute and more consistent with Alternative Payment Method (APM) policy.

A potential question concerns prong #2. CMS' response is implying that hospitals cannot merely use preferred status as the sole identifier of quality and resource use. Rather they must have quality and resource data consistent with the patients' needs and preferences and presumably consistent with the other quality and resource data that they are sharing pursuant to the requirement.

Email from CMS to Theresa Edelstein in Response to Inquiry Regarding Preferred Networks
November 25, 2019

Good afternoon Theresa-
Thank you again for your patience as we developed a response to your inquiry. Our goal for the revised CoPs included in the Medicare and Medicaid Programs; Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies, and Hospital and Critical Access Hospital Changes to Promote Innovation, Flexibility, and Improvement in Patient Care Final Rule (84 FR 51836) is to ensure that patients (or their representatives) have the freedom to choose among participating Medicare providers and suppliers of post-discharge services and, when possible, respect the patient's or the patient's representative's goals of care and treatment preferences, as well as other preferences they express. The proposed provisions under §482.43(f)(1) and (2) were finalized in the referenced rule under §482.43(c)(1) and (2):

- § 482.43(c)(1): The hospital must include in the discharge plan a list of HHAs, SNFs, IRFs, or LTCHs that are available to the patient, that are participating in the Medicare program, and that serve the geographic area (as defined by the HHA) in which the patient resides, or in the case of a SNF, IRF, or LTCH, in the geographic area requested by the patient. HHAs must request to be listed by the hospital as available.
- § 482.43(c)(2): The hospital, as part of the discharge planning process, must inform the patient or the patient's representative of their freedom to choose among participating Medicare providers and

suppliers of post-discharge services and must, when possible, respect the patient's or the patient's representative's goals of care and treatment preferences, as well as other preferences they express. The hospital must not specify or otherwise limit the qualified providers or suppliers that are available to the patient.

We expect hospitals to provide any information regarding PAC providers that provide services that meet the needs of the patient. As stated in the preamble discussion of the final rule, the requirement in (c)(2) is "...important because it requires the hospital, as part of the discharge planning process, to inform the patient or the patient's representative of their freedom to choose among participating Medicare providers and suppliers of post discharge services and must, when possible, respect the patient's or the patient's representative's goals of care and treatment preferences, as well as other preferences they express" (84 FR 51861). In addition, the requirement that HHAs request to be listed by the hospital is based on the statutory requirements under §1861(ee)(2)(D) of the Social Security Act. Furthermore, as stated in your email, the hospital must not develop preferred lists of exclusive providers; however, we would expect that all PAC providers presented to the patient meet the needs and preferences of the patient and have quality measure data that are relevant and applicable to the patient's goals and treatment preferences. If an identified PAC provider or supplier meets the needs and preferences of the patient and has quality measure data that are relevant and applicable to the patient's goals and treatment preferences, and the PAC provider is identified as a "preferred provider" of the hospital, it would be acceptable for that provider or supplier to be included in the list of PAC providers that are presented to the patient. We also believe that it is acceptable for the hospital to note which of the PAC providers on the list are identified as "preferred providers" of the hospital so long as the hospital is not presenting the patient with an exclusive list of only preferred providers or suppliers. The hospital's use of such a list would clearly not comply with the requirements of §§ 482.43(c)(1) and (c)(2) since it would not only limit the qualified providers or suppliers that are available (including those HHAs that have requested to be on the list), but it would also limit the patient's freedom to choose among the full range of PAC providers or suppliers available to the patient at the time of discharge.

Also, please note that the sub-regulatory guidance for the Discharge Planning Final Rule is currently being developed and is expected to be published early next year. Please contact me should you have any further questions. Otherwise, please contact the Center for Medicare and Medicaid Innovation for specific questions regarding the BPCI-Advanced payment model (I can provide you with a contact if needed).

Thank you,
Kianna

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