

Eli's Rehab Report

Outpatient Outlook: Transmittal 72 Puts Hospital Outpatient Therapy in Tight Spot

Good news: CMS carefully considering rehab community's concerns.

All was quiet on the hospital front until Nov. 18, 2011, when CMS released Transmittal 72. This publication revised the Conditions of Participation and Interpretive Guidelines for Hospitals -- and surprised hospitals and therapists alike with a major referral snafu.

In S482.56b of the transmittal, CMS states, "The practitioner [ordering therapy] must have medical staff privileges to write orders for these services."

The problem: The above statement implies that if a physician makes an outpatient therapy referral but happens not to have privileges at the hospital where the patient is seeking rehab, the hospital PTs, OTs and SLPs would not be allowed to accept that patient for rehab.

"This [new requirement] is contrary to common practice," says **Carolyn Zollar, JD**, vice president of governmental relations and policy for the American Medical Rehabilitation Providers Association. "It would also impose a considerable burden on providers and easily jeopardize access to rehab services."

Some patients could wait up to 15 weeks to see a privileged provider to get a referral, and "23-80 percent of patients who receive outpatient rehabilitation services could be turned away due to the language in this guidance," adds **Lisa Satterfield, MS, CCC/A**, director of health care regulatory advocacy for the American Speech-Language Hearing Association.

What went wrong: Some industry experts surmise that CMS created this guideline thinking primarily of inpatient rehab, overlooking the nuances of hospital outpatient rehab.

Associations Take Strong, Quick Action

National organizations representing hospitals and the rehab industry have written letters to CMS asking the agency to rescind the transmittal and modify it, reports **Chris Metzler**, chief public affairs officer for the American Occupational Therapy Association.

"We asked that any reissuance must acknowledge current practices and state laws," Zollar says. (The new CMS requirements conflict with state practice, scope of practice law, and hospital policies and practices that, for example, allow licensed physicians to make therapy referrals to any outpatient setting.)

AMRPA, ASHA, AOTA, the American Physical Therapy Association, American Hospital Association, Federation of American Hospitals, American Academy of Physical Medicine and Rehabilitation, and the National Association of Children's Hospitals and Related Institutions met with CMS on Feb. 6 to hash out all the details.

Compromise: These organizations agree with CMS that referral sources for rehab should be held to certain standards but have pointed out that existing requirements are sound.

"A number of checks are already in place to ensure that practitioners ordering therapy services are properly credentialed, have a valid state license and NPI number, are not on the OIG exclusion list, etc." Metzler says.

CMS to Work Out the Kinks

Industry leaders agree that the Feb. 6 meeting with CMS went well. "CMS was receptive to change and seemed to recognize the concerns we raised," says **Gayle Lee**, director of federal payment and regulatory affairs for APTA.

Good sign: "CMS said that Transmittal 72 was under review, and that they plan to take action fairly quickly," Lee tells **Eli**. "In the meantime, CMS officials said to 'not panic,'" Satterfield says.

To tie up any loose ends on the enforcement side, CMS said it would reach out to accrediting organizations, such as JCAHO, to ensure they know Transmittal 72 is under review. "CMS officials said to let their staff know if any hospital was cited in the interim for noncompliance to the transmittal," Lee says.

Note: At press time, CMS released a change memo to Transmittal 72. Stay tuned to the next issue of Rehab Report for the latest updates.