Eli's Hospice Insider

Quality: Medicare Charts New Course For Hospice Compare Additions

Subregulatory process will work fine, Medicare contends over industry objections.

The decision to add quality measures to Hospice Compare no longer will run through official rulemaking process, if a new proposal is finalized.

In the hospice final rule for 2019, the **Centers for Medicare & Medicaid Services** attempts to fend off criticism that it was eliminating some of the checks and balances provided by official rulemaking when it comes to determining whether and when a quality measure will be publicly reported.

In the final rule published in the Aug. 6 Federal Register, CMS finalizes its earlier proposal "to announce to providers any future intent to publicly report an already-adopted quality measure on Hospice Compare or other CMS website, including timing, through sub-regulatory means."

Some commenters on the proposed rule opposed moving the Hospice Compare public display determination process out of official rulemaking, which offers a public notice and comment period. The change has the "potential to reduce opportunities for public input and decrease transparency," they told CMS, according to the final rule.

For example: In its comments expressing concerns over the change, **AARP** noted "the Hospice Compare web site only began providing quality measure data in August 2017." Further, "we are concerned that the sub-regulatory notice is not transparent to stakeholders, including beneficiaries and their family caregivers. We do not think it is sufficient to determine measures meet the **National Quality Forum** (NQF) standards for reliability, validity, and reporting before public reporting. Providing notice to the public through rulemaking allows CMS to obtain comments, including concerns, directly from the consumers using the information on Hospice Compare to evaluate hospice providers."

Why it matters: "Selecting a hospice provider is an important decision, often associated with stress, and CMS needs to ensure the public has the ability to both provide feedback about which measures are displayed and also ensure the public is informed about the addition of new measures," the advocacy group told CMS.

Other commenters "recommended that in addition to the processes described in the proposed rule for assessing readiness (validity and reliability testing, etc.) and the NQF endorsement processes, CMS implement a user testing process that enables CMS to identify those measures for which performance can be translated into reliable and actionable information for beneficiaries."

Other commenters gave CMS other suggestions for the sub-regulatory process, including providing an opportunity for public comment and feedback and implementing separate processes for NQF and non-NQF-endorsed measures, with non-endorsed measures going through official rulemaking.

In the rule, CMS notes that it follows set processes "in determining the readiness for a quality measure to be publicly reported, and perform[s] the necessary analysis to determine and demonstrate that our measures meet the NQF measure evaluation criteria prior to publicly reporting provider performance on these quality metrics." That means "announcing measure timelines and readiness for public reporting through sub-regulatory channels will allow us to implement measures for public reporting in a more expeditious, yet still transparent manner, benefitting the public by providing QM data as soon as it is determined to meet the minimum standards for public reporting," CMS maintains.

Sub-Regulatory Doesn't Equal No Transparency, CMS Argues

CMS reassures HHAs that "a transparent process and allowing ample opportunity for public input prior to displaying a measure on Hospice Compare is a vital component of moving a measure from data collection to public reporting. We

CPT® 2023 American Medical Association. All rights reserved.

agree that stakeholder input is invaluable to this process, and our intent is to continue to communicate clearly with providers and continue to solicit their input on all aspects of the measure development lifecycle."

But CMS can retain that transparency and public input just as well in non-rulemaking ways, the agency insists in the rule. "The annual rulemaking cycle is not the only channel by which information can be communicated to the public in a transparent and collaborative manner. Sub-regulatory channels can be equally effective and timelier at communicating information to the public."

CMS further argues, "we view this proposal not as a loss of opportunity for dialogue or transparency, but as a way to change the channel by which we communicate with the public to receive input on one specific aspect of the QM development and implementation lifecycle." Timeliness will improve because "we would no longer have to wait for the annual rulemaking cycle to commence conversations about readiness for public reporting."

Bottom line: "Concerns about transparency and public input can be addressed through sub-regulatory channels," CMS emphasizes in finalizing its decision.

Note: See the final rule at www.gpo.gov/fdsys/pkg/FR-2018-08-06/pdf/2018-16539.pdf.

CPT® 2023 American Medical Association. All rights reserved.