# MDS Alert

## HIPAA, Billing & Survey News to Use

Beware delays in responding to authorized requests for a resident's medical records. A clinic in Baltimore found itself stuck with a $4.3 million fine for reportedly refusing to allow patients to see their medical records when they asked to, according to an Health & Human Services statement. The clinic apparently could have shaved $3 million off that amount if it had cooperated with HHS in the matter.

Under HIPAA, a covered entity has to give copies of medical records to patients "within 30 (and no later than 60) days of the patient's request," HHS notes in its statement.

Federal regulations governing nursing homes are more stringent, however, says attorney **Heather Berchem** with Murtha Cullina in New Haven, Ct. Thus, "facilities must provide access to records within 24 hours, excluding weekends and holidays, and right to copies upon request and two working days notice."

Berchem notes that "many facilities have policies and procedures that require supervision while a resident or representative is reviewing the original record." While providing supervision isn't a requirement, the practice does help make sure the record remains intact and isn't altered in any way, she advises.

Is your facility billing the AIDS add-on? While AIDS isn't on the MDS 3.0 because of privacy issues, the add-on is still available for facilities caring for Part A residents with the condition, says **Patricia Newberry,** executive director of clinical reimbursement for United Clinical Services in Atlanta.

To get the 128 percent AIDS add-on, you have to put the ICD-9 code for AIDS (042) on the UB-04, says **Joel Van Eaton,** reimbursement and RAI consultant/MDS 3.0 product development with Extended Care Products Inc. "This will cause the MAC payment algorithm to make the 128 percent adjustment to the bill."

Keep an eye out for the RAI User's Manual update due out this spring. The last thing you want to do is code the MDS 3.0 based on outdated information. So make sure to check the CMS website often until CMS releases the latest manual version (www.cms.gov/NursingHomeQualityInits/25_NHQIMDS30.asp).

Ready for new ICD-9 diagnoses? The ICD-9-CM Coordination and Maintenance Committee met on March 10 to discuss potential new diagnosis codes that are being considered for inclusion in this year's ICD-9 manual. Although none have been finalized, here's a peek at what's being considered:

Seclusion status: Attendees at the meeting supported the inclusion of this code, which could track patients that need to be protected from themselves or others.

Partial rotator cuff tear: The American Academy of Orthopaedic Surgeons "reviewed and supported the proposal" for this new code, the ICD-9-CM meeting minutes indicate.

Malnutrition: Several associations supported the inclusion of malnutrition as part of the ICD-9 codeset.

Severely calcified coronary lesions: Members of the ICD-9 committee debated over whether the term "severe" was essential to this new potential code.

Hypertrophic cardiomyopathy: Attendees indicated "general support" for the proposal of a code for this condition.

Pneumothorax and air leak: Committee members suggested that "it may be reasonable" to introduce a new code for chronic pneumothorax.

To read the entire list of proposed diagnoses and the committees' comments, visit http://www.cdc.gov/nchs/data/icd9/2011March_Summary_%20HA.pdf.

Beware new CMP rules that go into effect in 2012. Come Jan. 1 of next year, the way in which CMS handles civil monetary penalties will change -- and not in a way that favors nursing homes. As required by the Affordable Care Act, the Department of Health & Human Services will set up an independent informal dispute resolution that a nursing home can use to eliminate or reduce the CMP.

"After an independent IDR, CMP funds will be collected and placed in escrow pending completion of any formal appeal," states a survey & cert memo on the upcoming change. "A portion of the CMP attributable to Medicare, which is currently conveyed to the U.S. Treasury, may instead be used for the protection or benefit of nursing home residents," the memo notes.

Don't miss: For an inside look at how the new CMP rules will affect your facility, see the next Long-Term Care Survey & Compliance Alert. If you haven't yet subscribed, see the advertisement for the newsletter on page 55.

Wondering when your facility will be required to implement a compliance plan? "Nursing homes will need to have compliance programs no later than March 23, 2013, according to the healthcare reform law," says **Janet Potter, CPA, MAS,** healthcare research specialist with FR&R Healthcare Consulting Inc. in Deerfield, Ill. "However, guidance and specific requirements for those programs have not yet been released," she adds.

"The guidance must be released no later than March 23, 2012. In the meantime, the OIG SNF sample compliance plan makes a good starting point for preparing," Potter notes. "The OIG SNF compliance guidance may be found at: http://oig.hhs.gov/fraud/complianceguidance.asp. The original guidance is dated March 16, 2000. And the supplemental information is dated September 30, 2008."