MDS Alert

Medicare Compliance: Spare A Resident's Medicare Days And Strike Out In The Compliance Arena

Find out why this often good-faith effort is a bad compliance idea.

Saving a resident's Medicare benefits for a rainy day? If the person qualifies for skilled coverage, it's raining.

Example: One resident living in an assisted living facility fell and had mood issues, so he ended up on an acute psych unit in a hospital where he received some psychiatric therapy. "Then he went to a SNF, but the SNF did not skill him, even though he had ADL decline and mood decline, which the nursing staff addressed," says **Rita Roedel, RN, MS**, a consultant with **BDO/Heritage Healthcare Group** in Milwaukee. "Yet that person really should have been skilled, and the family was actually requesting the facility to submit a demand bill."

Residents can also resume skilled services, if needed, within 30 days after discharge from Part A services. However, some facilities don't reskill residents within that 30-day window - even though the person suffers a significant decline requiring skilled intervention to turn around, observes **Jane Belt, MS, RN, CS**, a consultant with **Plante, Moran Swartz Group LLC** in Columbus, OH.

"A resident who has a significant ADL decline after going off skilled services is at risk for all kinds of negative outcomes, if the decline is left unaddressed," Belt says. "That's where restorative nursing as a skilled service can play a role."

Watch Out for Demand Billing

Facilities are required to give beneficiaries written notice of their noncoverage decisions with an option to submit a demand bill to the fiscal intermediary to see if it will pay. Thus, if the SNF doesn't skill a resident who is eligible for such care, it can't really reconcile not informing the resident of that decision with demand billing requirements, caution legal experts.

The beneficiary or his representative could, however, make an informed choice not to use the Medicare benefit and to pay out of pocket, says **Cheryl Field, MSN, RN, CRRN**, a consultant with LTCQ Inc. in Lexington, MA.

Consider These Other Key Issues

In addition to demand billing requirements, facilities that decide not to skill a resident who meets skilled coverage criteria and has days left in the benefit period should consider these issues, suggest experts:

1. State law provisions making Medicaid the payer of last resort, if the effect of not submitting a Part A claim is to trigger Medicaid payment for those dates of care, says **Howard Sollins**, attorney with **Ober/Kaler** in Baltimore. "Facilities can get into trouble for sparing Medicare benefits to save them for another condition ... when Medicaid is the backup source for payment," advises Field.

2. Admission agreements, particularly if the result is that the resident pays privately for days that could have been covered by Medicare, says attorney **Donna Senft,** also with Ober/Kaler. "The agreements may include provisions that say the facility will exhaust third-party payers before billing the resident on a private-pay basis," Senft says.

3. Fraud and abuse allegations. Facilities that try to save a resident's Medicare benefits so the facility can get a better daily rate later for a higher paying RUG can get in serious trouble, warns **Roberta Reed, MSN, RN**, a consultant with

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