



One-Year Delay Needed for Home Care Providers to Implement Biggest Changes to CoP Regulations in Nearly 30 Years

Background

On January 9, 2017, the U.S. Centers for Medicare and Medicaid Services (CMS) finalized the most substantial single set of regulatory changes and new operating requirements for home health agencies since 1989 – in nearly 30 years.

The changes include extensive amendments and additions to the Medicare Home Health Conditions of Participation (CoPs). The CoPs are a set of rules that Home Health Agencies (HHAs) and many of their contractors must abide by in order to participate in the Medicare program and deliver services to Medicare beneficiaries. These rules also impact state Medicaid program regulations, especially in states like New York, which substantially bases its licensing regulations on the CoPs, thus extending much of the CoPs' applicability to Medicaid services as well.

Providers **only have six months** to understand and implement these sweeping new changes, which take effect on **July 13, 2017**, and are expected to cost several millions of dollars to implement on a nationwide basis. Indeed, CMS estimates these changes will cost home health agencies **\$293 million** nationally in the first year and **\$290 million** in year two and thereafter. These costs will be incurred without any compensatory adjustments to Medicare and Medicaid rates for home care services, including no premium adjustments to Medicaid and Medicare managed care plans for home health agency services.

The lengthy final CoP rule contains an array of new requirements and changes related to: nursing, therapy and aide services; supervision assessments; patients' rights; care planning; quality improvement; clinical records; agency structure; governance; management; and other CoPs that dictate the operation and function of HHAs certified by Medicare (and Medicaid).

These revisions affect all levels of a home care agency's operations – from the delivery of services, to the management of staff, to recordkeeping, to the overall structure of the organization. While some of the changes are merely technical or organizational in nature, others would have a significant impact on HHA clinical and administrative functions. A comparison document from CMS shows more than 50 specific regulatory references that are being changed all at once, many of them far-reaching in scope.



Serious cost and implementation challenges

Although well-intended and laudable, the CoP changes present serious concerns related to the cost and compressed timeline for implementation. This timeline not only strains providers but also state-level surveyors, which are charged with enforcing the rules, and other state-level jurisdictions that are expected to begin incorporating the new rules into their own licensing and regulatory structures.

Thus far, CMS has yet to supply state surveyors with the Interpretive Guidance to assist in their enforcement of these CoPs, and many state health jurisdictions, like New York's Department of Health, are already coping with administrative and resource challenges. CMS's delay in releasing Interpretive Guidance has a downstream effect on providers subject to state-level surveillance activities, as all stakeholders need time to interpret, gain clarification, implement and plan for enforcement of the new rules.

The CoP changes were proposed in October 2014 but they were only just-recently finalized in December 2016 – at a time when many other new payment and regulatory processes typically go into effect, such as nationwide reimbursement changes under the Home Health Prospective Payment System, not to mention state-specific pressures, such as a new minimum wage hike that providers must prepare for and implement in New York. CMS allowed itself more than two years to finalize the changes, but has extended only six months for providers and state surveillance agencies to take on the massive task of implementation and enforcement.

Delay Needed

Given the costs and severe implementation pressures, **HCA is seeking a delay in the CoP effective date to no earlier than July of 2018.** We urge the entire New York Congressional Delegation to insist that home health care service providers are afforded more time to implement these substantial regulatory changes. An extension of the implementation date would allow CMS to develop guidance and training for state surveyors, and it would give providers the opportunity to prepare their agencies for the changes and to try to address the associated costs in a more reasonable timeframe.