Professional Healthcare RESOURCES
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HEARTBEAT

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Eileen DeCesare, RN,
President & CEO Emeritus of Professional Healthcare Resources, Inc.

Looking at Challenges for the Future

I recently attended the Financial Management Annual Conference sponsored by the National Association of Home Care and Hospice, in Chicago. The highlights of the conference were focused on how to prepare for the Medicare cuts that we will be facing come January 2011.

Outside factors dictate many things that we should do in order to survive the cuts and other Medicare mandates. Home Care and Hospice Care agencies are now facing more and more scrutiny from CMS as it seeks to curtail and prevent Medicare fraud.

With new efforts by the Obama administration, we will see many stricter and stringent mandates that will affect our reimbursements. For example, the OIG reported in FY 2009:

- Exclusions of 2,556 individuals and entities from Federal healthcare programs
- 671 criminal actions against individuals or entities that engaged in crimes against departmental programs
- 394 civil actions, which include False Claims Act and unjust enrichment suits, civil monetary penalty settlements and administrative recoveries related to self disclosures; and
- As of December 2009, another 2,355 investigations were still pending.

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Editorial

As we move into the fall we start to see some of the most important recognitions of the healthcare year are upon us. Obviously we can't pay tribute to all those recognitions in a four page newsletter but we can highlight a couple.

Our own Kathi Pines from our Norfolk office has written a very informative article about how home health can ease the load for case managers. Yes, Case Management week is October 10-16. Incidentally if you are in the Norfolk area you may see Kathi's name crop up in other healthcare publications as she is also a freelance journalist, writing on healthcare and senior issues.

During the month of November we recognize Diabetes, one of the leading diseases within the older population. As such we have provided details of a fundraising activity that the American Diabetes Association is running which merely involves dining at your favorite restaurant. We must not forget that November is also National Home Care & Hospice Month. With that in mind Eileen DeCesare highlights in her message Healthcare Reform and some major challenges that could be down the pike for our industry.

Lastly our friend and colleague Elizabeth Hogue, Esq., tells us about some regulatory changes that Healthcare Reform has bought about for Physicians, when referring to home health.

Happy reading!

Justin Ivatts, PCM (AMA), *Editor*

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Health Care Reform: Physicians and Patients' Right to Freedom of Choice of Providers

To date, only hospitals are required to present lists of some types of providers to patients so that they can choose which providers they want to render services to them. Likewise, statutes in some, but not all states, require physicians and other types of providers to give notice to patients if they have financial/ownership interests in providers to which they make referrals. As a result of health care reform, the "picture," with regard to physicians and patients' right to freedom of choice, is about to change.

Specifically, physicians who make referrals for certain types of imaging services are required to inform patients in writing at the time referrals are made that patients may obtain services from providers of their choice. Physicians are also required to provide patients with a list of providers who supply such services in areas in which patients reside. It appears that the Secretary of the U.S. Department of Health and Human Services (DHHS) may also have the discretion to apply this requirement to other designated health services (DHS) under the so-called Stark laws, including home health and HME services.

The Patient Protection and Affordable Care Act (PPACA) provides as follows:

> (a) In General – Section 1877(b)(2) of the Social Security Act (42 U.S.C. 1395nn(b)(2)) is amended by adding the following new sentence: 'Such requirements shall, with respect to magnetic resonance imaging, computed tomography, positron emission tomography, and any other designated health services specified under subsection (h)(6)(D) that the Secretary determines appropriate, include a requirement that the referring physician inform the individual in writing at the time of the referral that the individual may obtain the services for which the individual is being referred from a person other than a person described in paragraph (A)(i) and provide such individual with a written list of suppliers (as defined in section 1861(d)) who furnish such services in the area in which such individual resides.'
>
> (b) Effective Date – The amendment made by this section shall apply to services furnished on or after January 1, 2010.

Although there is a lack of clarity about whether the above criteria related to imaging services require immediate compliance or compliance only after the Secretary has published final regulations implementing this section, it is clear that physicians will be required to present lists of imaging providers to their patients and to inform of their right to choose.

Physicians are currently required to abide by patients' right to freedom of choice of providers. In addition to the state statutes described above, there are two sources of this right that apply to physicians:

1. All patients have a common law right, based upon court decisions, to control the care provided to them, including who renders it. Thus, when patients voluntarily express preferences for certain providers, their choices must be honored regardless of payor source or type of care.

2. Federal statutes of the Medicare and Medicaid Programs guarantee Medicare beneficiaries and Medicaid recipients the right to freedom of choice of providers. (Medicaid recipients may have waived this right if they participate in waiver programs.) Consequently, when Medicare patients and non-waiver Medicaid patients voluntarily express preferences for providers, these choices must be honored.

If patients voluntarily express preferences or choose providers other than those ordered by their attending physicians, then patients' choices "trump" physicians' orders and must be honored.

Practitioners may view these new requirements with skepticism. After all, as a practical matter, many patients are likely to choose providers recommended by their physicians. Some practitioners may also view the presentation of lists to patients as promotional opportunities for providers required to present such lists. Comments to the preamble of "safe harbor" regulations published by the Office of Inspector General (OIG) seem to reinforce this point:

> Comment: Commenters overwhelmingly supported requiring health care providers to disclose to patients any financial relationships with sources of referral. They argued that such disclosure would not be burdensome, and that many codes of professional ethics, as well as many state statutes, already mandate such disclosure.

Challenges

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At the conference, we heard about successful agencies and how they developed their survival strategies to address budget cuts and other mandates:

- Agencies /Providers will be asked to accept greater financial risk for outcomes
- Operational efficiency will be a critical issue
- Closer collaboration among all providers will be a mandate for survival
- Increased significant investments in technology will be a must for survival
- Increased quality expectations which will require close monitoring and reporting of care data and financial data
- Risk for regulatory oversight will be elevated
- More focus on Community-based services and care.

We as a company have started our own strategies. The implementation of Point of Care, Cerner Beyond Now, technology in our organization. This is a major undertaking that will help achieve our objectives to manage during challenging times. The project is big and requires major changes in the way we do things. While change is not always pleasant, we really do not have any other option but to become more efficient.

As we progress with Cerner, we are learning new things every day. With Cerner, we are equipped with a powerful tool to help us become more efficient and patient focused. We are developing new programs and tools to reach out to our referral sources and create a platform where we can partner in providing the quality care we jointly aspire for. As we look at new programs, we are looking at the emergence of state of the art and innovative practices to address complex chronic conditions that put burdens on the hospitals and on home care. We adhere to evidence based clinical practice that helps us and guide us to deliver the care to meet the quality outcomes we desire. When I refer to circling back, I am referring to the old practice we have of putting the patient in the center and with all the healthcare providers supporting the patient needs. In this model, we are treating the patients as active participants in the planning of their care. This creates a great opportunity for collaboration and cooperation amongst all involved in the delivery of care.

We are looking at the challenges that we are facing as new opportunities to create relationships that ensure the results we are trying to achieve – QUALITY OUTCOMES!

Eileen DeCesare, RN, MS, CNAA, LNC, NE-BC
President, CEO Emeritus

Response: With one exception, we have decided not to require such disclosure to qualify under a particular safe harbor provision. First, the activities covered under each safe harbor provision are by definition activities that we deem to have a low potential for abuse. Second, disclosure in and of itself would not provide a significant additional assurance that abuse would not occur, even though disclosure may reduce the potential for abuse somewhat by increasing consumer awareness of the relationship between health care providers. Finally, it is possible for a health care provider to cast a disclosure to fit that provider's promotional objective, which is exactly the opposite result from that which we would want to achieve.

Despite such skepticism, it is clear that competition among providers continues to "heat up," and that legislators and regulators are determined to address the issue of patients' right to freedom of choice. It is also clear that, despite fierce competition among providers, the rights of patients cannot be trampled.

Lightening the Case Manager's Load

A case manager's main responsibility is to coordinates patient-focused care in a cost-effective manner without diminishing the quality of care a patient will receive. Once a patient is put under the watchful eye of a case manager, that patient becomes the case manager's responsibility. Not only is the case manager tasked with coordination of care, he/she is also busy making sure the insurance company and other sources of payment are able to cover the treatments for the patient. All this while working with the patient, the case manager must also advocate for the patient directly with administrators and physicians to determine the best course of action for the most positive outcomes. This means a case manager's job is a very serious responsibility and he/she has many pieces to keep in place to make it all happen successfully.

Discharge planning can be one of the most stressful parts of this process. When it is time to discharge a patient home, the case manager must use his/ her expertise to offer the best solution for that particular patient's unique situation by communicating available high-quality resources to the patient. As a result, case managers must be very careful when recommending a home health company to patients. With so many home health companies competing for attention, sometimes case managers may be overwhelmed by the sight of the parade of marketing representatives who may go in and out of their offices daily. The question becomes: how can these home health companies benefit me and which ones are worth my already limited time? After all, the home health company chosen for a particular patient should work as a member of the team assisting the case manager to safely transition the patient home. Sometimes, it may appear that home health representatives are only there to take the referrals and not reciprocate any level of service. However, many home health companies are striving to be part of the case management team. But, how can a case manager recognize which ones truly can be of benefit to them? Below, we will explore three ways in which home health companies can service case managers.

- Keeps case managers in compliance. (Assists the case manager by offering the patient "Freedom of Choice" or "Patient Choice.") Home health representatives are more than willing to be interviewed by a patient and his/her family during the discharge planning process. Home health representatives recognize that by getting to know the patient before coming into the home, the patient feels much more comfortable. The case manager can also feel that he/she did the best job possible in offering the patient the opportunity to choose their own agency.
- Saves time and reduces stress for case managers. (Assists the case manager by coordinating resources.) Home Health representatives are happy to order in durable medical equipment, obtain follow-up doctor's appointments, and even arrange transportation if necessary. Home health agencies know that by doing this, it reduces the time needed by the case manager to discharge a patient. This also means less time following up with every element the process. The case manager can breathe easier, knowing that all those matters are being taken care of by the agency.
- Reduces patient length of stay. (Assists the case manager by being willing to treat less acute patients in the home and help identify which cases are treatable in the home setting.) Many times there is a lot of pressure for case managers to discharge patients in an optimal time frame. Home health assists with this because agencies are able to develop care plans and treat patients at home who would have no choice but to stay in the hospital otherwise.

Home Health agencies and their representatives can be a tremendous resource to case managers. They are more than willing to assist in helping the case manager's job as stress free as possible by keeping in mind the ultimate goal is ensuring continuity of care and minimizing the likelihood of future hospitalizations for the same condition in each individual patient. Case managers can be confident that by working with Home health agencies who are willing to provide such services, they will be successful in executing their discharge plans and delivering excellent patient care.

Kathi Pines is a Community Liaison for Professional Healthcare as well as a Free-lance journalist who has been a published writer of Health and Senior issues for over 7 years.

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