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INCONSISTENT APPLICATION OF FREQUENCY STANDARDS IN PLANS OF CARE LEAVE PROVIDERS CONFUSED

The Centers for Medicare and Medicaid Services (CMS) and the Texas Department of Aging and Disability Services ("DADS") have separately offered guidance and interpretations on the appropriate use of numeric ranges or similar terminology in Plans of Care ("POCs") that have left providers confused as to how to meet the frequency standards. In addition, DADS' policy appears to be in conflict with the surveyor' application of the rules when reviewing POCs.

Specific points of confusion are the use of frequency ranges such as "2-3 times per week," "30-40 hours," and phrases used to describe a prescribed range of services, such as "***up to*** 12 visits per month," etc.

The Medicare Condition of Participation governing POCs requires that the POC cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. Texas licensure rules are similar to the Medicare Rules. The underlying principle of both sets of rules is that POC be ***individualized*** to each patient.

Medicare Manuals are replete with examples of the appropriate use of numeric ranges for services, visits, hours, etc., in a POC. In fact, Medicare expressly recognizes that the purpose of allowing the POC to set ranges is to promote flexibility in the implementation of a POC and to enable providers to respond to patient needs and to ensure that the most appropriate level of services is furnished, without having to obtain a new order or revised POC each time a frequency is changed. Medicare does not permit a range to include the number zero (0) because that is not considered a unit of service.

Medicare does not expressly prohibit the use of phrases such as "up to" in a POC. The Texas Association for Home Care (TAHC), however, met with DADS (then TDH) in 2004, and received assurances that the use of the words "up to" was permissible in frequency ranges. This policy interpretation has never been formalized by DADS, unfortunately.

Not only has the difference in interpretations caused confusion among providers over what is appropriate, providers are being cited during surveys for violating the POC standard by using the words "up to" in establishing ranges. In addition, providers are being held to the highest number of units in a numeric range. For example, if a POC contains a permissible range of 30-40 units of service, the surveyors want to see that 40 units of service were actually delivered, and some surveyors are citing providers for not following the plan of care if they furnish fewer than the highest number of services included in the range.

One important item of note is the fact that frequency itself is not a standard or condition, but is merely ***one*** example of the type of information and instruction that should be included in a patient's POC. The ultimate goal of the POC is *individualization* of care. Thus, it appears that allowing for flexibility in POCs would actually result in increased individualization of services to the patients.

The argument against allowing frequency ranges is that unscrupulous providers could take advantage of the flexibility that the ranges offer and use it to their financial advantage by, for example, always providing the lowest frequency of services, even if not medically appropriate. Nonetheless, POCs could incorporate safeguards to ensure that they are truly individualized to each patient, including clinical benchmarks, patient responses, guidelines or other specific instructions to providers to indicate when a greater or lesser frequency of services is warranted. Further, surveyors should be able to detect patterns of inappropriate reductions in services through regular chart reviews.

While this issue is ripe for clarification from DADS, it also underscores the fact that federal and state requirements do differ, and providers that are both licensed and certified must adhere to both sets of rules in the interim.

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