DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Office of Clinical Standards and Quality/Survey & Certification Group

Ref: S&C- 12-17-Hospitals

DATE: **February 17, 2012**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Referring Practitioners Ordering Outpatient Services in Hospitals

Memorandum Summary

- ***Requirements for Ordering Hospital Outpatient Services:*** Outpatient services in hospitals may be ordered (and patients may be referred for hospital outpatient services) by a practitioner who is:
  - Responsible for the care of the patient;
  - Licensed in, or holds a license recognized in the jurisdiction where he/she sees the patient;
  - Acting within his/her scope of practice under State law; and
  - Authorized by the medical staff to order the applicable outpatient services under a written hospital policy that is approved by the governing body. This includes both practitioners who are on the hospital medical staff and who hold medical staff privileges that include ordering the services, as well as other practitioners who are not on the hospital medical staff, but who satisfy the hospital's policies for ordering applicable outpatient services and for referring patients for hospital outpatient services.
- ***Previous Guidance Superseded:*** This guidance supersedes the guidance for §482.56(b) (Tag A-1132) and §482.57(b)(3) (Tag A-1163) found in SC-11-28 (May 13, 2011) and State Operations Manual (SOM) Transmittal #72 (November 18, 2011).

Background

On May 13, 2011 the Centers for Medicare & Medicaid Services (CMS) issued SC-11-28. Among other things, this memorandum provided an advance copy of an update to SOM Appendix A for hospitals which included guidance concerning who may order hospital rehabilitation (§482.56(b), Tag A-1132) and respiratory care services (§482.57(b)(3), Tag A-1163). On November 18, 2011, the final copy of the revised SOM Appendix A was released via SOM Transmittal #72. Subsequently, CMS received considerable feedback that this guidance, which was intended to expand the categories of practitioners who could order rehabilitation and respiratory care services beyond physicians, actually was having the opposite from the intended effect, by stating that all ordering practitioners had to hold medical staff privileges, without

distinguishing between inpatient and outpatient services. Particularly in the area of outpatient rehabilitation services, stakeholders informed us that the revised guidance was posing a barrier for access to care, since a substantial percentage of these services are provided in hospital outpatient rehabilitation facilities to patients referred by practitioners who are not on the hospital's medical staff and who do not hold medical staff privileges. We were advised that in many cases the referring practitioners are based in other states where patients have travelled to receive specialized services. Clearly these practitioners do not seek to provide care in the patient's local hospital and are not interested in seeking medical staff privileges merely to refer patients for outpatient services.

Discussion

It was not our intention to create access to care barriers or to limit the ability of practitioners who are appropriately licensed, acting within their scope of practice, and authorized under hospital policies to refer patients for outpatient services. We distinguish these outpatient referral cases from cases where a practitioner provides care in the hospital, either to inpatients or outpatients, and must have medical staff privileges to do so. For example, we have long permitted outpatient referrals for laboratory services, where the condition of participation (CoP) for hospital laboratory services at §482.27 is silent on the question of who may order such services. Similarly, the CoP for radiologic services at §482.26(b)(4) explicitly provides for provision of services on the orders of practitioners with clinical privileges as well as other practitioners authorized by the medical staff and the governing body to order such services.

Outpatient Services CoP

We therefore believe it is appropriate to interpret §482.54, (the CoP governing outpatient services, which is also silent on the issue of who may order such services), to mean that orders for outpatient services (as well as patient referrals for hospital outpatient services) may be made by any practitioner who is:

- Responsible for the care of the patient;
- Licensed in, or holds a license recognized in the jurisdiction where he/she sees the patient;
- Acting within his/her scope of practice under State law; and
- Authorized by the medical staff to order the applicable outpatient services under a written hospital policy that is approved by the governing body. This includes both practitioners who are on the hospital medical staff and who hold medical staff privileges that include ordering the services, as well as other practitioners who are not on the hospital medical staff, but who satisfy the hospital's policies for ordering applicable outpatient services and for referring patients for hospital outpatient services.

The hospital's medical staff policy for authorizing practitioners to refer patients for outpatient services must address how the hospital verifies that the referring practitioner who is responsible for the patient's care is appropriately licensed and acting within his/her scope of practice. The policy must also make clear whether the policy applies to all hospital outpatient services, or whether there are specific services for which orders may only be accepted from practitioners

with medical staff privileges. For example, a hospital may prefer not to accept orders for a regimen of outpatient chemotherapy or outpatient therapeutic nuclear medicine services from a referring physician who does not hold medical staff privileges. In such cases, the hospital's policy must make these exceptions to the general authorization for referring practitioners clear.

This guidance applies to all outpatient services.

Prior Guidance for Ordering Rehabilitation & Respiratory Care Services

We are rescinding those portions - and only those portions - of SC-11-28 and SOM Transmittal #72 contained in Tag A-1132, regarding §482.56(b), and in Tag A-1163, regarding §482.57(b)(3), concerning ordering of rehabilitation and respiratory care services, since they are in conflict with the above guidance. The guidance contained in these two tags is rescinded in its entirety and superseded by this memorandum.

At a future date we will incorporate this revised guidance into SOM Appendix A.

Questions concerning this memorandum may be sent to the Survey & Certification Hospital email mailbox at hospitalscg@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated to all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management