

Hospitals, Psychiatric Hospitals, and Critical Access Hospitals must comply with the Medicare Interoperability and Patient Access Rule

May 12, 2021

More than a year ago, on May 1, 2020, the Centers for Medicare & Medicaid Services (CMS) published its Interoperability and Patient Access Rule (Rule) (CMS-1995-F). The Rule became effective for hospitals (including short term acute care, cancer, children's, long term care, and rehabilitation hospitals), psychiatric hospitals, and critical access hospitals (CAHs) on **May 1, 2021**.

According to CMS, "more than 95 percent of hospitals and 75 percent of office-based clinicians are utilizing certified health IT, [but] challenges remain in creating a comprehensive, longitudinal view of a patient's health history." The Rule is aimed at addressing this challenge.

The Rule created new Medicare Conditions of Participation for Medical Records in the following regulations:

- Hospitals: 42 C.F.R. § 482.24(d)(1)-(5)
- Psychiatric Hospitals: 42 C.F.R. § 482.61(f)(1)-(5)
- CAHs: 42 C.F.R. § 485.638(d)(1)-(5)

The Rule requires hospitals, psychiatric hospitals, and CAHs (herein, simply "hospitals") to provide electronic patient event notification regarding admissions, discharges, and transfers to other healthcare facilities and post-acute community providers. The community providers may include primary care practitioners and groups, as well as applicable specialty providers and suppliers. Examples may include primary care practices, specialty physician groups, dialysis centers, home health agencies, hospice providers, ACOs, and others.

The intent of the event notifications is to keep practitioners currently responsible for and participating in the patient's care informed of recent events, promote collaboration between healthcare providers, assist with transitions of care, and ensure prompt follow-up by post-acute community providers. According to the Rule, the notifications should be sent **prior to or at the time of** the event.

CMS also released a memorandum on May 7, 2021 (QSO-21-18-Hospitals/CAHs) containing advance copies of subregulatory guidance to promote compliance with the new requirements. The subregulatory guidance will update the CMS State Operations Manual in the following appendices, which updates will be forthcoming:

- Appendix A – Hospitals and Psychiatric Hospitals
- Appendix W – CAHs

The Rule is applicable to hospitals that meet the electronic health records or administrative system requirements of the content exchange standard Health Level Seven (HL7) 2.5.1. CMS is not requiring hospitals to follow a specific format, but defers to processes already in place or preferred by individual organizations. The notifications may be

generated out of the electronic health record system, but may also be sent from hospital registration systems. Notably, those hospitals that have yet to meet content exchange standard requirements are not required to comply with the Interoperability and Patient Access standards at this time.

The Rule requires, at a minimum, that the event notification include the patient's name, the practitioner responsible for the treatment of the patient, and the name of the institution providing care to the patient. Facilities may choose to provide additional information in the notification, provided they comply with Federal and State law. Hospitals are required to transmit notification of **every admission, discharge, and transfer**, including from the emergency department. If more than one admission (or emergency department registration), discharge, or transfer occurs during any calendar day, a notification is required for **each event**.

The patient, or their representative, may prefer to maintain their personal privacy and not agree to any notification to other community practitioners or providers. In these instances, the hospital is directed not to send notification and to document the patient's preference in the medical record.

CMS acknowledges that some patients may not have a primary care provider or practice, or are otherwise unable to identify an applicable healthcare practitioner or post-acute provider. In this situation, the hospital should document in the patient's medical record its failed attempts to identify a contact and subsequent inability to send any notification.

The CMS memorandum is addressed to State Survey Agency Directors, but is applicable to **all hospitals** that participate in Medicare, whether certified for participation by a State Survey Agency or deemed to participate by an approved accrediting organization. Compliance with this new requirement will be assessed by both state and hospital accrediting organization surveyors.

Providing notification of every admission (or emergency department registration), discharge, and transfer prior to or at the time of the event is a huge undertaking for hospitals, regardless of bed size or volume of patients.

The Dentons Health Care Group is available to answer your questions and strategize with you to ensure your hospital is in compliance with this newly effective Medicare requirement. We are happy to set up time to discuss at your convenience.

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