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Challenging Hospital Discharge Decisions

Introduction

Hospital stays are difficult times for patients and their families, especially for those who need long term care upon discharge. Increasingly short hospital stays pose a tremendous challenge to families who have to arrange post-hospital care very quickly while also tending to their loved one's illness and emotional needs. Hospitals have important duties to help patients and their families find and arrange needed care, however, some do this better than others and these duties are often compromised by the desire (usually financial) to discharge patients quickly. You may find it is critical to know your rights and how to exercise them. This fact sheet describes California and federal requirements for safe discharge planning, Medicare coverage and appeal rights, and ways to prevent a premature or inappropriate discharge.

Hospital Requirements Prior to Transfer to a Health Facility

Before a hospital can transfer a patient to another health facility, the hospital must make arrangements for admission to the health facility. (22 Cal. Code of Regs. Section 71717(f)(1)) The hospital must also have a determination from the patient's physician that the transfer will not create a hazard to the patient. (22 Cal. Code of Regs. Section 71717(f)(2)) In addition, the hospital must give the patient or the person legally responsible for the patient a minimum of 24-hour notice and, if needed, counseling for post-hospital care. (22 Cal. Code of Regs. Section 71717(f)(3); Health and Safety Code Section 1262.5(b))

A new law (Senate Bill 675, passed in 2015), requires hospitals to allow patients to designate a "family caregiver" such as a relative, friend, or neighbor who will be notified when a discharge order is written and can assist in discharge planning. (Health and Safety Code Section 1262.5(d))

Medicare

During a hospital stay, Medicare beneficiaries have important rights to receive the medical care they need. You have these rights whether you are enrolled in the original Medicare plan or a Medicare health plan.

Hospitals have a strong financial incentive to discharge Medicare patients as quickly as possible. Medicare generally pays hospitals flat rates based on the type of medical problem being treated. If the hospital spends less money on your care than Medicare pays, it makes money, and vice versa.

To protect you from being discharged too quickly, Medicare gives you the right to appeal hospital discharge decisions. It also requires the hospital to provide any discharge planning services you need.

Your Medicare Rights

At or near admission, a hospital must give you the [Important Message from Medicare](#). This Medicare notice explains that you have the right:

- To receive Medicare covered services, including necessary hospital services and services you may need after discharge, if ordered by your doctor. You have a right to know about

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- these services, who will pay for them, and where you can get them.
- To be involved in any decisions about your hospital stay, and know who will pay for it.
- To appeal if you think you are being discharged too soon. The notice also explains how to file an appeal.

Notifying You of Your Rights

To make sure you are informed about your discharge rights in a timely manner, hospitals must usually give you the Important Message from Medicare twice, once upon admission and again before discharge.

The hospital must first give you the Important Notice from Medicare at or near admission, but no later than two days after admission. At that time it must ask you to sign and date the notice. The hospital must give you the original copy of the signed notice and keep a copy for its records.

Before you are discharged, the hospital must give you another copy of the Important Message from Medicare. It must give you this notice as far in advance of your discharge as possible, but no more than 2 days before your planned date of discharge. The second notice is not required during very short hospital stays if the original notice was given to you within two days of your planned discharge date.

If the hospital gives you the second notice on the date of your discharge, it must deliver it to you at least four hours before your planned discharge.

The hospital must deliver the Important Message from Medicare to you in person. However, if you cannot understand the notice, the hospital must deliver it to your representative and ask him or her to sign it. Your representative can be someone who has legal authority to act for you, a family member or close friend.

Appealing Hospital Discharge Decisions

Your hospital, doctor, or Medicare health plan will inform you of your planned date of discharge. If you think you are not ready to leave the hospital, tell your doctor and the hospital staff immediately about your concerns. Ask your doctor to advocate for your interests. Sometimes hospitals and health plans pressure doctors to arrange quick discharges.

You should request an appeal if your concerns about early discharge are not resolved. **You can stay in the hospital and Medicare will continue to cover your stay as long as you file the appeal before you are discharged.** Once you appeal, you will not have to pay for the services you receive during the appeal (except for charges like copays and deductibles).

It is best to file your appeal on or just before the planned date of discharge. Ask for an "Immediate Review." Your representative, such as a legal agent or family member, can file an appeal on your behalf.

To file your appeal, call Livanta at 1-877-588-1123. Livanta is a "Quality Improvement Organization" (QIO) – a private organization working under contract with Medicare to handle certain appeals and other matters. Tell Livanta why you object to the planned discharge and provide any information that supports your appeal. For more information about Livanta or appeals, go to the Livanta web site at <http://bfccqioarea5.com/states/ca.html>

After you file your appeal, the hospital (or your Medicare health plan) must give you a Detailed Notice of Discharge that explains the reasons it thinks you are ready to be discharged. The hospital will send a copy of your medical records to Livanta for its review.

These appeals are completed quickly. Livanta will notify you and the hospital of its decision, usually within one day after it receives the necessary information.

- If Livanta finds that you are not ready to be discharged, Medicare will continue to cover your hospital stay.
- If Livanta finds you are ready to be discharged, Medicare will continue to cover your services until noon of the day after Livanta notifies you of its decision.

Livanta must notify you of its decision by telephone and in writing. The written notice will describe additional options for appeal.

Discharge Planning Services

Medicare certified hospitals must help patients arrange care needed after discharge. This service, called discharge planning, is usually provided by the hospital's social work or discharge planning department.

Contact the discharge planning department as soon as possible after admission. Discuss help and care you will need after discharge. Ask for recommendations and help in arranging necessary care and services. Request a copy of your written discharge plan and seek changes if necessary.

Medicare certified hospitals must:

- Identify your anticipated discharge needs within 24 hours of your admission;
- Provide discharge planning assistance for every patient;
- Identify discharge goals, your preferences, and services you need and their availability;
- Assess whether you can get needed care where you had been living;
- Share a list of nearby home health agencies or nursing homes if their services are indicated;
- Discuss evaluation results with you;
- Prepare and share with you a transfer summary that includes the treatment plan and instructions on post-hospital care;
- Use professional staff to deliver discharge planning services;
- Ensure that necessary care and services are delivered upon discharge;
- Prepare you and your family for discharge and your post-hospital care needs through education and counseling;
- Transfer or refer you, along with necessary medical information, to appropriate facilities, agencies or outpatient services, as needed, for follow-up care.

These requirements are found at Title 42, Code of Federal Regulations, Section 482.43 and Title 42, United States Code, Section 1395x(ee). Additional California hospital discharge planning requirements are established at California Health and Safety Code Sections 1262.5 –1262.6.

Discharge to Long Term Care Facilities

If you are in need of long term care services, the hospital must provide you with contact information for at least one public or nonprofit agency or organization dedicated to providing information or referral services to community-based long term care options. This information must include contact information for the area agency on aging serving your county of residence, local independent living centers, or other information appropriate to your wishes and needs.

The hospital should also identify local facilities and give you information about them. It must also identify affiliated health care providers so you will know if the hospital has a financial interest in the referral. The hospital cannot force you to go to any particular facility.

Visit facilities under consideration and determine whether they meet your needs and expectations. Check CANHR's website at www.canhr.org for nursing home lists and publications on how to evaluate facilities.

If you are referred to a facility that has a record of poor care or is too far away, tell the hospital your concerns. You do not have to go to a facility that cannot meet your needs. Ask the hospital to help you gain admission to nearby facilities that meet your care standards. If you want Medicare or Medi-Cal to help pay for your care, now or in the future, limit your search to facilities that are certified by these programs.

The hospital must allow you to stay if you need skilled nursing facility services but a bed is not available in your area. Medicare covers hospital stays until a skilled nursing facility bed is located.

Refusing a Proposed Discharge

If you are unhappy with a proposed discharge placement, explain to the hospital staff, in writing if possible, what you want. Ask to speak with the hospital Risk Manager and let them know you are unhappy with your discharge plan.

If a hospital proposes an inappropriate discharge, you may refuse to go. Although you cannot stay in a hospital indefinitely, the hospital cannot discharge someone needing long term care until it arranges safe and adequate follow-up care. California state policy and some local ordinances prohibit hospitals from discharging their patients to homeless shelters or to the streets.

Remember, if the hospital is proposing to transfer the patient to a health facility, like a nursing home, it must “have arrangements” made for the admission. So if the patient makes it clear to the receiving health facility that the patient will refuse admission, will not sign an admission agreement, and will not pay for any services, it is unlikely the hospital can claim that arrangements have been made.

Filing Complaints

Call Livanta at 1-877-588-1123 about hospital complaints, including discharge problems and quality of care concerns.

You can also file hospital complaints with California’s licensing agency, the Department of Public Health (DPH). To make a complaint, call the district office of the DPH Licensing and Certification Division for your area. District office phone numbers are available on CANHR’s web site at http://canhr.org/factsheets/nh_fs/html/fs_NH_complaint.htm or by calling the DPH Licensing and Certification Division at 1-800-236-9747.

Additional Resources

Contact your local Health Insurance Counseling and Advocacy Program (HICAP) office for help with Medicare concerns. Call 1-800-434-0222 to be connected automatically with the HICAP office in your California County or go to www.cahealthadvocates.org for information about Medicare and HICAP in California.

You can also contact Medicare directly at 1-800-MEDICARE (1-800-633-4227) or find resources on its web site at www.medicare.gov.

To see the hospital discharge planning guide the federal government provides to hospitals, which includes an extensive discussion of the requirements and best practices, see <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-32.pdf>

Visit http://www.canhr.org/factsheets/misc_fs/PDFs/Medicare_HosDis_Notice_Regs07.pdf for Medicare’s regulations establishing the right to appeal hospital discharge planning decisions.

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Please mail comments to web.manager@web.manager.
650 Harrison Street, 2nd Floor • San Francisco, CA 94107 • (415) 974-5171
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