"Never Events" in Nursing Homes: Compliance and Financial Implications

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Objectives

- Review impact of current Medicare “never event” payment rules on skilled nursing facilities (SNFs)
- Examine proposed CMS rules that would extend nonpayment policies to Medicaid
- Analyze Pennsylvania SNF nonpayment law
- Consider compliance implications in preparation for national expansion to SNFs

Medicare Nonpayment Rules for Hospital Acquired Conditions

- No Medicare payment under a higher DRG despite services rendered if condition not Present On Admission (POA)
- Applies to 10 Hospital-Acquired Conditions (HACs) and 3 National Coverage Determinations (NCDs)
Medicare HACs

• Are high cost or high volume or both
• Result in the assignment of a case to a diagnosis-related (DRG) group that has a higher payment when present as a secondary diagnosis, and
• Could reasonably have been prevented through the application of evidence-based guidelines
• List of conditions can be revised from time to time by CMS

Impact on SNFs?

• Screenings?
• Observations stays?
• Referrals for pressure ulcers, neglect?
• Better documentation on transfers?
• Financial concerns?
SNF Never Events???

- Pennsylvania first state to test the waters?
- The Preventable Serious Adverse Events (PSAE) Act, Act 1 of 2009 (HB 84)
- BUT…CMS issues proposed regulations on Feb. 17, 2011 extending non-payment to Medicaid…. 76 Federal Register 9283 (Feb. 17, 2011)

Crucial Definitions

- HAC: hospital-acquired condition
- HCAC: health care-acquired condition
- POA: present on admission
- PPC: provider preventable condition
- OPPC: other provider preventable condition
PPACA Mandates New Policy by July 1, 2011

- Section 2702 of the Patient Protection and Affordable Care Act of 2010 (PPACA) requires Medicaid regulations to prohibit federal payments to states for any amounts expended for providing medical assistance for HCACs.
- Section 2702 authorizes states to identify other PPCs for which Medicaid payments would be prohibited.

National Policy to Prohibit Medicaid Payment for Provider Preventable Conditions

- States required to adopt Medicaid nonpayment policies for hospitals that are at least as stringent as existing Medicare nonpayment policies for (HACs) that are not present on admission.
- States required to identify other provider-preventable conditions (OPPCs) for which Medicaid payments would not be made.
- No protection for use, discoverability or admissibility of information in litigation.
What is an OPPC?

- A condition that occurs in any health care setting, including outpatient hospital, nursing facility or ambulatory surgery center that:
  - Could have reasonably been prevented through the application of evidence based guidelines; and
  - Has a negative consequence for the beneficiary; and
  - Is identified in the State plan; and
  - Is auditable

Every State OPPC List Must Include

- Wrong surgical or other invasive procedure
- Surgical or other invasive procedure performed on the wrong body part
- Surgical or other invasive procedure performed on the wrong patient
Medicaid Nonpayment Criteria

- PPC would otherwise result in an increase in Medicaid payment
- State can reasonably isolate for nonpayment the portion of the payment directly related to the treatment for, and related to, the PPC
- Policies cannot cause access to care problems

CMS Must Approve All State Plans

- All state Medicaid nonpayment policies must receive CMS state plan approval
  - 13 states that have existing nonpayment policies will be required to submit SPAs, even though their policies may have been implemented through state law or other state administrative procedure
Mandatory Reporting to State Medicaid Agency

- States must create a “simplified level of reporting” of all conditions on state-specific nonpayment list, regardless of provider’s intention to bill
- CMS believes that without direct reporting requirements, providers have no incentive to report conditions or adverse events
- Require existing Medicaid claims system be used as a platform for provider self-reporting

PA: The Preventable Serious Adverse Events (PSAE) Act, Act 1 of 2009 (HB 84)

- Passed unanimously June 8, 2009
- Effective Dates
  - 60 days from signing all health care facilities and providers except for SNFs
  - SNFs: Delayed implementation due to concerns about definition of SNF PSAEs
  - Department of Public Welfare (DPW) required to publish PSAE Bulletin for SNFs
DPW Publishes Proposed PSAE Bulletin

- Published October 16, 2010 with 30 day comment period
- 35 comments received addressing over 300 issues
- Identifies preventable serious adverse events (“PSAEs”) for nursing facilities

PSAE General Rule

- Prospective application
- A health care provider may not *knowingly* seek payment from a health payor or patient for a PSAE or for any services required to correct or treat the problem created by a PSAE when that event occurred under their control
PSAE General Rule

• If provider discovers that payment has *unknowingly been sought* for a PSAE or services required to correct or treat the problem. . .
  – it must immediately notify the health payor or patient *and*
  – refund payment within 30 days of discovery or receipt of payment, whichever is later.

What Is A PSAE?

• An event that occurs in the SNF *and*
• Is on DPW’s list of PSAEs *and*
• Meets four PSAE conditions
The Four PSAE Conditions:
Condition 1 - Preventable Event

• To be preventable, the event could have been anticipated and prepared for, but, nonetheless, occurred because of an error or other system failure

The Four PSAE Conditions:
Condition 2 - Serious Event

• The event is serious if the event subsequently results in death or loss of body part, disfigurement, disability or loss of bodily function lasting more than seven days or still present at the time of discharge from a nursing facility
The Four PSAE Conditions:
Condition 3 - Event Within SNF’s Control

- The event was within the control of the nursing facility. Control means that the nursing facility had the power to avoid the error or other system failure.

The Four PSAE Conditions:
Condition 4 - Error Or System Failure

- The event is the result of an error or other system failure within the nursing facility.
### Six Categories Of PSAE’s: 1 - Surgery

- Surgery performed on the wrong body part
- Wrong surgical procedure performed on a resident
- Surgery performed on the wrong resident
- Unintended retention of a foreign object in a resident after surgery or other procedure

### Six Categories Of PSAE’s: 2 - Product Or Device Events

- Event associated with use of contaminated drugs, devices or biologics
- Event associated with use or function of a device in resident care in which the device is used or functions other than as intended
- An intravascular air embolism that occurs while being cared for in a nursing facility
### Six Categories Of PSAE’s: 3 - Resident Protection Events

- Resident suicide or attempted suicide
- Resident elopement (disappearance for more than four hours)

### Six Categories Of PSAE’s: 4 - Care Management Events

- Medication error (such as, errors involving the wrong drug, wrong dose, wrong resident, wrong time, wrong rate, wrong preparation, or wrong route of administration)
- Severe allergic reaction
- A hemolytic reaction due to the administration of ABO/HLA-incompatible blood or blood products
### Six Categories Of PSAE’s:
#### 4 - Care Management Events

- Stage 3 or 4 pressure ulcers acquired after admission to the nursing facility
- Catheter-associated Urinary Tract Infection (UTI)
- An event related to spinal manipulative therapy
- Vascular catheter-associated infection

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### Six Categories Of PSAE’s:
#### 4 - Care Management Events

- An event related to hyper- or hypoglycemia (Diabetic ketoacidosis, Nonketotic hyperosmolar coma, Diabetic coma, Hypoglycemic coma) the onset of which occurs while the resident is being cared for in a nursing facility
Six Categories Of PSAE’s:
5 - Environmental Events

- A burn incurred from any source
- Falls (fractures/dislocations/crush injuries/intracranial injuries/burns)
- An electric shock
- Oxygen or gas line contains the wrong gas or is contaminated by toxic substance
- An event associated with the use of restraints or bedrails

Six Categories Of PSAE’s:
6 - Criminal Events And Unlawful Activities

- Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed healthcare provider
- Abduction of a resident
- Sexual assault on a resident
- A physical assault (that is battery)
How Will A PSAE Be Identified?

- Monitor Adverse Events in Facility
- Review PSAE event list
- If event is on the list, determine if all four criteria have been met
- If event is on the PSAE list and all four criteria have been met, do not seek payment

How Will The Non-Payment Amounts Be Calculated?

- If PSAE occurs on a single day, SNF may not claim payment of the resident care portion of the MA per diem rate
- If PSAE occurs over multiple days (i.e., Stage 3 or Stage 4 decubitus ulcer), SNF may not submit a claim or otherwise receive payment of the resident care portion of the MA per diem rate for any day that the PSAE occurs.
How Will The Non-Payment Amounts Be Calculated?

- Compare resident Case Mix Index ("CMI") scores and reduce the resident care portion of the MA per diem rate and the patient pay amount by any percent increase in those scores.
- Which CMI scores are compared depend on whether the resident is hospitalized or transferred as a result of the PSAE.

Calculating Non-Payment Amounts Relating To Services To Correct Or Treat A PSAE

- If resident is not transferred, compare resident's CMI score based on the assessment immediately following the PSAE (post-PSAE CMI) to CMI score from assessment immediately prior to the occurrence of the PSAE (pre-PSAE CMI).
  - If Post CMI score is higher:
    - \((\text{post-PSAE CMI score}) - (\text{pre-PSAE CMI score})\) / \(\text{Pre-PSAE CMI Score}\)
  - If Post CMI Score is equal to or lower; No reduction results.
Durable Medical Equipment

• SNF may not seek any payment through an exceptional durable medical equipment (DME) grant for equipment or services required to correct or treat a problem created by a PSAE

How Long Will Facilities Forego Payment For A PSAE?

• If a payment restriction is imposed, then the payment restriction will continue until the resident’s CMI score upon reassessment under normal procedures is equal to or less than the pre-PSAE CMI score or until DPW determines that the resident’s higher post-PSAE CMI score is attributable to reasons other than the PSAE
### How Long Will Facilities Forego Payment For A PSAE?

- If there is a change in a resident’s medical condition unrelated to the PSAE which results in a higher CMI

- DPW will not allow a facility to determine on its own whether it may seek payment when the facility’s Medical Director or the resident’s attending physician has concluded that the resident’s high CMI is no longer related to a PSAE
- DPW will review documentation and send a written notice of the results of its review
WHAT?

• Pre CMI minus Post CMI divided by the difference multiplied by the number of days???
• Reassessment CMI score equal to or less than the pre-PSAE CMI score??
• What should we do?

Let’s Review

• PSAE Event if meets all four conditions:
  1. Event is preventable and
  2. Event is serious and
  3. Event is with SNF’s control and
  4. Event occurs because of error or system failure
Practical Considerations

• Establish systems to ensure that all events that are on the PSAE list are reviewed to determine whether the event is a true PSAE

• Create a PSAE Review Team with representation from all critical departments, including clinical and financial representatives

Practical Considerations

• Who will make the decision?
  – Health Center Level?
  – Corporate Office Level?

• How will you determine billing procedures?

• Is your billing system capable of such adjustments?
PSAE Determination

- Conduct Initial Four Step Review
- Document your findings
- Convene the “PSAE Review Team”
- Make Final Determination
- Communicate Determination to MDS and Billing Team

Let’s Discuss a Hypothetical

Incident Reports  Surveys

Liability  Investigations
Case Study

- Bariatric resident care-planned for 2 person transfer using hoyer lift
- CNA transfers resident alone
- Resident and lift fall
- Resident fractures ribs and right femur

Case Study

- Resident at risk for falls
- Care plan with interventions
- Found on floor with fractured patella
- Transferred to hospital
- PSAE?
- OPPC?
Questions?

Thank you for your time!

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