

Long-Term CARE PRACTICE

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Skilled Nursing Facility Consolidated Billing: Services Furnished Under an Arrangement With an Outside Entity

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Whenever a skilled nursing facility (“SNF”) receives a service from an outside supplier that is subject to SNF consolidated billing, the Social Security Act requires the SNF and the supplier to enter into an “arrangement.” §§ 1862(a)(18), 1866(a)(1)(H)(ii) and 1888(e)(2)(A) of the Social Security Act. Under this required “arrangement,” suppliers must look to the SNF for payment as Medicare’s payment to the SNF represents payment in full for arranged-for services. Unfortunately, what is meant by an “arrangement” is left largely unexplained by the regulations, resulting in widespread confusion among providers.

CMS recently tried to address this confusion by issuing a Reminder regarding applicable consolidated billing requirements that pertain to SNFs and to outside suppliers that serve SNF residents. See CMS Publication 100-04, Transmittal 183, May 21, 2004. CMS reminded facilities that all Part A and Part B services provided to residents by outside suppliers had to be made “under an arrangement.” This “arrangement” must be in the form of a written agreement to reimburse the outside entity for Medicare-covered services subject to consolidated billing. Despite CMS’ attempt to provide clarification, these regulations remain misunderstood and, reportedly, CMS is considering whether further clarification is necessary.

However, until such clarification, SNFs must continue to be vigilant in monitoring their own compliance under the limited guidance that is available now. Consolidated billing applies to Medicare Part A and some Part B expenses. Part A consolidated billing requires that a SNF include on its Part A bill almost all of the services that a resident receives during the course of a Medicare-covered stay, except for those services that are specifically excluded from the SNF’s global prospective payment system (“PPS”). Part B consolidated billing makes the SNF responsible for submitting the Part B bills for appropriate services that a resident receives during a non-covered stay. For any Part A or Part B service that is subject to SNF consolidated billing, the SNF must either: furnish the service directly with its own resources or obtain the service from an outside entity under an “arrangement” described in § 1861 of the Social Security Act.

Under this arrangement, the outside entity must look to the SNF for its payment because Medicare’s payment to the SNF represents payment in full for the arranged-for service. § 1861(w) of the Social Security Act. CMS warns that by entering into such an arrangement, the SNF agrees to exercise professional responsibility and control over the arranged-for services and not function as a mere billing service. Further, the SNF must specify in writing that it assumes responsibility for the quality and timeliness of the arranged-for service (*see* 42 C.F.R. § 483.75(h) (2)).

While CMS has made clear that an “arrangement” is a written agreement, the statutes and regulations do not spell out the actual terms to be included in this agreement. The parties are instead instructed that the terms are to be arrived at through direct negotiation. For a valid “arrangement” to exist, the written agreement must specify how the supplier is to be paid for its services, but at the very least, the terms of the agreement should also provide for the following:

- That the services be furnished in accordance with the plan of care established by the facility and a physician;
- The geographic areas in which services are to be provided;
- That the contracted services meet the same requirements as those which would be applicable if the services were furnished directly by the SNF;
- The preparation of and access to treatment records, progress notes and other observations, and for the prompt transmittal of those records to the facility;
- The financial arrangements, making it clear that the contracting organization may not bill the patient or the health insurance program;
- The period of time the contract is to be in effect; and
- A means of resolution in the event a dispute arises over a particular service.

In addition, the facility should consider whether to include indemnity provisions, hold harmless provisions, and fraud and abuse protection into the contract.

Without a valid “arrangement” for outside services subject to consolidated billing, Medicare will not provide coverage. The SNF also risks being found in violation of the terms of its provider agreement. *See* 42 C.F.R. § 489.20(s). In addition, the Act allows civil money penalties when a bill or request for payment is inconsistent with an arrangement or in violation of the arrangement

requirement. See § 1866(g) of the Social Security Act.

Therefore, whenever a SNF utilizes an outside supplier for services subject to consolidated billing, the SNF should have a written agreement in place with that supplier. Conversely, whenever an outside supplier furnishes such a service to a SNF resident, it must do so under a written agreement with the SNF.

Often, problems arise when a resident is offsite and obtains services that are subject to consolidated billing, but fails to notify the SNF. SNFs can act to prevent such problems by ensuring that each resident (and, if applicable, his or her representative) is fully aware of the requirements. Residents have the right of free choice of qualified service providers; however, residents should be informed that in selecting a particular SNF, the resident has effectively exercised this right of free choice with respect to the entire package of services for which the SNF is responsible under the consolidated billing requirement, including the use of specific outside suppliers from which the SNF chooses to obtain services.

In addition, SNFs are required to advise each resident, on or before admission and periodically during the stay, of any charges for services not covered by Medicare. SNFs should use this opportunity to ensure that residents understand the need to consult the SNF before obtaining any services offsite.

While SNFs should take reasonable steps to prevent such problems from arising, outside suppliers are also responsible for being aware of, and complying with, the consolidated billing requirements. If a supplier ascertains that a particular beneficiary is, in fact, a resident of a

SNF with which the supplier does not have a valid agreement in place, then the supplier should contact the SNF before actually furnishing services to that beneficiary.

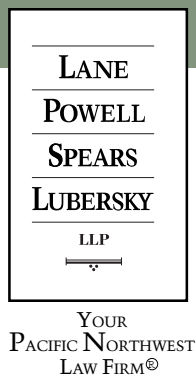
In short, SNFs must be wary when consolidated billing services are out-sourced to outside suppliers and providers. Written agreements must be in place with each such supplier. Moreover, residents must be educated early and often about their obligation to inform the SNF of any services requested off-site from outside suppliers. By understanding the rules and anticipating the pitfalls, SNFs can protect themselves and their residents from this widely misunderstood Medicare billing and reimbursement requirement.

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