

STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
MEMORANDUM

Series - 87-96  
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HEALTH FACILITIES SERIES: H-60

SUBJECT: Discharge Review Program

I. Introduction

As a result of proposed statutory changes to those Laws which affect the way hospitals are paid, a case payment reimbursement system (DRGs) will be implemented in New York State as of January 1, 1988. These statutory changes also provide for the establishment and implementation of a Discharge Review Program in order to assure the appropriate discharge of hospital patients under such a reimbursement system.

In response to the anticipated changes in the reimbursement system as required by the proposed statute, the State Hospital Review and Planning Council, in its November meeting, amended Section 405.22 and 405.25 and added a new Section 405.42.

Amendments to Section 405.22 provide that no patient who requires continuing health care services in accordance with the patient's discharge plan may be discharged until such services are secured or determined by the hospital to be reasonably available to the patient.

Amendments to Section 405.25 provide patients with the right to receive: (1) an appropriate written discharge plan; (2) a written notice at admission which sets forth the patient's rights while in the hospital as well as describes the Discharge Review Process; (3) a notice at discharge which informs the patients of their appeal rights; and (4) with the exception of those patients whose inpatient care is covered under Title XVIII, the right to a review of their discharge by an Independent Professional Review Agent (IPRA) approved by the Department of Health.

II. Discharge Review Program

The new section 405.42 sets forth the requirements of the Discharge Review Program. Below is a summary of the key provisions of this review process:

1. A hospital inpatient discharge review program will be established as of January 1, 1988 for all patients other than beneficiaries of Title XVIII (Medicare) - Medicare patients are covered by the federal appeal process implemented by the New York State PRO.
2. Hospitals will be required to enter into contracts with independent professional review agents approved by the Department of Health for all patients with the exception of those eligible for payment by the State's agencies. The review agent for those agencies will be

appointed directly by the Department of Health. Article 43 (Blue Cross) and Article 44 (HMO) corporations are eligible to seek IPRA designation and/or may select the IPRA for their subscribers and enrollees from the approved list.

3. No hospital inpatient may be discharged on the basis that inpatient hospital services are no longer medically necessary and that an appropriate discharge plan has been established unless a written notice of such a determination and a copy of the discharge plan has been provided to the patient or the appointed personal representative of the patient.
4. The patient or the appointed personal representative of the patient shall have the opportunity to sign the discharge notice and a copy of the discharge plan and receive a copy of both signed documents. Every hospital shall use the common notice set forth in the attached regulation for all patients except Title XVIII beneficiaries.
5. While Medicare beneficiaries are covered by the federal Medicare appeal process, Medicare patients must receive a written copy of their discharge plan as well as a notice at discharge which describes their rights pursuant to the federal appeals process. The contents of this notice will be developed by the hospital and be consistent with federal Medicare requirements. For information purposes, attached to the memo is a suggested format for the Medicare notice. This notice does not replace or modify any other hospital issued Medicare notices nor does it modify hospital responsibility or activity with regard to the Medicare program.
6. The patient or the appointed personal representative of the patient may request a review, by the appropriate IPRA approved by the Department of Health, of the discharge determination related to the medical necessity of continued inpatient hospital services, the appropriateness of the discharge plan, and the availability of required continuing health care services.
7. If the hospital and patient's physician agree on the appropriateness of the discharge, a patient must receive a written discharge plan and discharge notice which he can appeal to the IPRA. In order to avoid financial liability during the appeal process, the patient must appeal by noon of the day after receiving the discharge notice. If a review is requested, the IPRA has one working day after the receipt of the necessary information from the hospital to make a determination and notify the patient and hospital. The review agent must solicit the views of the patient or the appointed personal representative before making a final decision.
8. If the hospital believes the patient is ready for discharge but the attending physician disagrees, the hospital may request, by telephone, a review of the validity of the hospital's determination by the appropriate IPRA. Prior to making a determination, the IPRA shall

provide an opportunity to the attending physician and hospital representative to confer and provide information which may include the patient medical records if required by the review agent. The IPRA must also solicit the views of the patient involved or the appointed personal representative of the patient before making a decision. If the IPRA agrees with the hospital, a discharge notice can be issued to the patient who can appeal such a determination as set forth in Item 7 above. The subsequent review by the IPRA must be conducted by a physician not involved with the original determination.

9. If the IPRA, upon review of the information provided by the hospital as a result of an appeal of a discharge, does not concur with the hospital, continued stay in a hospital shall be deemed necessary and appropriate for the patient for purposes of payment for such continued stay.
10. If a patient requests an appeal of a discharge notice, the hospital may not demand or request any payment for inpatient hospital services provided to the patient subsequent to the proposed time of discharge and prior to noon the day after the date the patient or the appointed personal representative receives notice of the results of the review of the IPRA other than deductible, copayment or other charges that would be authorized for a patient whose inpatient hospital service continued to be appropriate and necessary.

### III. Hospital Responsibilities

In order to assure the effective operation of the Discharge Review Program, hospitals will be responsible for the following items:

1. Make public and provide each hospital inpatient with a copy of the admission notice contained in the attached regulation;
2. Provide each patient at discharge with: (1) a written discharge plan that meets the patient's post-discharge medical needs, and (2) a discharge notice which sets forth patient appeal rights under state and federal statutes. It is expected that hospitals, will provide patients with the discharge notice no later than 12:00 p.m. unless the availability of the patient's appointed personal representative requires that the notice be provided during afternoon or evening hours.
3. Enter into contracts with one or more IPRA's approved by the Commissioner for the purpose of conducting inpatient discharge reviews for all patients with the exception of patients eligible for payment by state government agencies. Blue Cross and HMO corporations may designate the review agent for their subscribers from the list of approved review agents, however, the hospital will select the review agent for all other patients including uncompensated care patients.

4. The cost of conducting the discharge review will be directly reimbursed by Medicaid to the Medicaid review agent. Blue Cross and the HMOs shall reimburse the review agents designated by them for the cost of the Discharge Review Program. Hospitals will reimburse the IPRA's directly for the cost of all other patients.
5. After providing each patient with a discharge notice, the hospital is required to assist the patient in initiating an appeal if the patient is unable to request the reconsideration themselves and there is no appointed personal representative available to provide the necessary assistance.
6. If the attending physician does not agree with the hospital's determination that the patient is ready for discharge, the hospital must provide the appropriate review agent with the patient's medical records if so requested. The Department will require review agents to review the patient's medical record before making a determination that the patient is ready for discharge. The review agent shall notify the hospital of the results of its review not later than one working day after the date the review agent has received the necessary requested information. The hospital must notify the attending physicians of the IPRA's decision and if the IPRA concurs with the hospital's determination, the hospital shall notify the patient using the common discharge notice set forth in the attached regulations as well as providing a written discharge plan.
7. If a patient or appointed personal representative appeals a discharge notice issued by the hospital, the hospital shall provide to the appropriate IPRA, the records required to review the determination by the close of business of the first working day following the date the patient received the discharge notice. The IPRA shall conduct a review of and provide a written notice to the patient or appointed personal representative of the patient and the hospital of the results of the review not later than one full working day after the date the review agent has received the request for review and the necessary records from the hospital. The hospital shall notify the attending physician of the results of the review.
8. The IPRA will be required to immediately notify the hospital that it has received an appeal from a patient in their facility. The hospital will be required to assist the IPRA in providing the patient with the written notice of its determination.

#### IV. Definitions

In response to requests for clarification from health care providers, consumers and other groups and organizations affected by the case payment system, below are definitions or clarifications of a number of terms or phrases which appear in the attached regulation.

Term "Discharge Plan"

Definition

Hospitals are required by Section 405.22 of the regulations to adopt and implement written policies and procedures which include the utilization of written criteria for a screening system to promptly identify patients who may need post-hospital care planning and services. For those patients determined to need assistance with post-hospital care, it is required that the health care professionals whose services are medically necessary, together with the patient and the patient's family/representative, develop an individualized comprehensive discharge plan consistent with medical discharge orders and identified patient needs. For a more information regarding the Department's discharge planning requirements, please refer to Department of Health Memorandum 86-64 dated 7/3/86.

The attached regulations provide that all patients receive an appropriate written discharge plan prior to discharge. Clarification has been requested as to what constitutes an appropriate discharge plan for those patients who require little or no assistance with post-hospital care. For patients not requiring post discharge services from a licensed or organized health care provider other than their personal physician and/or dentist (e.g., home health care agencies, RHCs, personal care attendants), the written discharge plan may be written discharge instructions for self care and any recommendation for follow-up visits to a physician, dentist or clinic. For well mothers and babies, the discharge instructions may serve as the written discharge plan. The mother must be provided with the discharge notice for herself and the baby and be afforded all the appeal rights contained in the attached regulations.

Term "Determined by the hospital to be reasonably available to the patient."

Definition

Under the terms of the legislation and the regulations, a hospital may not discharge any patient requiring "continuing health care services...until such services are secured or determined by the hospital to be reasonably available to the patient." For patients requiring institutional care or home care services, hospitals are expected to make arrangements with the selected post-hospital care provider(s) to secure timely and appropriate care at discharge. For patients whose post-hospital needs are limited to private physician services or routine medical supplies and equipment available over the counter, these services will be considered to be reasonably available if:

- (a) The patient's medical, mental, social and financial condition does not categorically preclude the patient from obtaining the medically required post hospital services.

- (b) The services can be obtained by or for the patient in a time frame which is consistent with the patient's medical condition.

Term "Appointed Personal Representative"

Definition

The appointed personal representative shall be a person designated by the patient at the time of admission. This designation shall only be for the purposes specified in these regulations and shall become effective only if the patient is not able (or incompetent) to make an appeal determination within the prescribed timeframes. Hospitals should secure the designation in writing from the patient where possible and shall assure acceptance by the designee of the responsibilities. If the patient cannot or is incapable of making this designation at admission or during the hospital stay, the hospital should follow accepted next-of-kin procedures or seek legal designation for the discharge notice and review. Next of kin procedures require that if a person is unable to make the designation, the hospital contacts:

- (i) the spouse
- (ii) a son or daughter eighteen years of age or older
- (iii) a parent
- (iv) a friend who has demonstrated by frequent visits to the patient a close personal relationship and who can reasonably be expected to act in the patient's interest

Term "Opportunity to Sign"

Definition

The patient or the patient's appointed personal representative shall be afforded the opportunity to sign the discharge plan and discharge notice when these documents are presented by the hospital. In cases that require the decision making of the appointed personal representative and that person is not available to sign the documents, the hospital shall make diligent efforts to contact by telephone, shall document the communications with the representative, including any comments or concerns expressed by the representative, and shall provide copies of these documents to the representative by overnight mail if representative isn't available to receive in person.

Term "Discharge/Transfer"

Definition

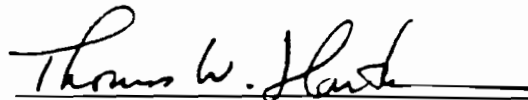
For purposes of these regulations, a discharge requiring the discharge review procedures shall apply to those patients who would be leaving or no longer under the jurisdiction of the licensed acute care component of the

facility. These would include transfers to another acute care institution except in urgent or emergent circumstances when in the attending physician's opinion, failure to immediately transfer the patient would jeopardize the patient's health and safety, or when Department of Health regulations require such transfers. Transfers between acute care components of the same hospital are not considered discharges.

V. Payment Issues

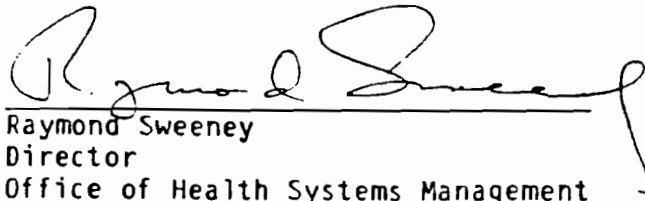
A number of questions have been raised regarding payments to hospitals during the appeal process. During the inlier portion of the case payment, no additional reimbursement will be made to hospitals to cover inpatient days associated with the appeal process.

Reimbursement is available to the hospital for days of care provided during the outlier period, if the patient initiated the appeal during the prescribed time frames. If the patient fails to initiate the appeal by noon of the day after receiving the discharge notice, the patient becomes liable for any additional care or services if the IPRA's decision upholds the hospital's determination to discharge the patient.



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Attachment

Distribution: Hospitals

Other Interested Parties