New CMS guidelines suggest changes in advance directive policies

Ambulatory surgery patients who become incapacitated should have their wishes for care honored, the Centers for Medicare and Medicaid Services (CMS) stresses in its new guidelines.

Previously, the guidelines permitted an ambulatory surgery center (ASC), for reasons of conscience or policy, to refuse to honor advance directives calling for cessation of medical care in case of serious conditions.

The latest revision of the CMS guidance manual for state surveyors adds that ASCs may not issue "blanket refusals" of advance directives but may include "statements of limitation" explaining their policies regarding advance directives.

On March 15, CMS sent a letter to surveyors that contained revisions to ASC Interpretive Guidelines, including Section 416.50 (c), Advance Directives.

According to Kara Newbury, JD, assistant director of health policy for the Ambulatory Surgery Center Association (ASCA), surveyors were to receive updated software reflecting the changes to the guidelines during the 8 weeks following the March 15 letter. For that reason, some centers that were surveyed during that 2-month period may not have been cited based on the changes.

As with all Medicare rules, if a state law is more strict, it takes precedence, so ASCs must be aware of their states' restrictions on advance directives as well. "You need to understand your state's law before developing a policy," Newbury notes. "But do not have a blanket refusal statement, because surveyors will cite your center."

Ambulatory focus

Because ASC patients generally are healthier than those in hospitals, advance directives are more likely to be invoked because of surgical complications rather than chronic conditions.

According to the CMS guidelines, it is reasonable to have a policy that, in an emergency, OR staff will attempt to resuscitate the patient prior to transfer to a hospital.

The new guideline appears in section 416.50 (c) of the guidance manual. Whatever the policy, an ASC must ensure it is clearly written and presented to all patients before they undergo procedures. If the state issues advance directive forms, the ASC or referring physician should provide them to patients on request.

It is not enough to assume that a patient will offer an advance directive for emergency care or specify a person with power of attorney to make care decisions.

ASCs must spell out the patient's right to make informed decisions and to give an advance directive. Whatever the patient's decision, it should be documented in the patient's chart. If a hospital transfer occurs, any existing directive should accompany the patient.

The CMS manual states, "To the degree permitted by state law, and to the maximum extent practicable, the ASC must respect the patient's wishes and follow that process."

The manual specifies that a statement of limitation must do the following:
- clarify any differences between ASC-wide conscience objections and those that may be raised by individual ASC staff
- identify the state legal authority permitting such objection
- describe the range of medical conditions and procedures affected by the objection.

To be valid, the statement of limitations must be approved by the governing board.

Gina Throneberry, MBA, RN, CASC, CNOR, director of education and clinical affairs for ASCA, recommends that ASCs address the advance directive from the first patient contact.

"Ask the patient preadmission if they have an advance directive, and document this in the medical record," she advises. "If 'yes,' then ask them to bring it with them the day of surgery. If 'no,' ask if they would like more information."

On the day of surgery, ASC staff should place a copy of the directive in the patient's medical record, Throneberry says. "If they forget to bring it, then document in the patient's medical record that you tried to get it." This way, if a transfer is necessary, the medical record will contain the relevant information.

The right to information

Advance directives are just 1 category of patient rights addressed by CMS. The guidance manual devotes considerable space to ensuring patients have access to information about the ASC, state laws, and the process for protecting their rights.

"The right to make informed decisions presumes that the patient, or the patient's representative or surrogate, has been provided information about the patient's health status, diagnosis, and prognosis," the manual notes. (A patient surrogate is someone the patient has designated to make health care decisions or provide other assistance during the ASC visit. It may be as formal as a power of attorney or as informal as an oral identification, according to the guidelines.)

For example, every patient is asked to consent in writing to surgery, but that consent depends on whether the patient has adequate information. While the physician's office normally obtains consent after explaining the procedure, the ASC is still responsible for having a process in place to ensure patients are adequately informed. In addition to health-related information, ASCs must inform patients of the names of physicians with financial interest in the ASC.

The new guidelines give ASCs more leeway in scheduling patient processing. They no longer require ASCs to notify patients of their rights before the date of the procedure; it is permissible to notify the patient immediately before the procedure. In addition, ASCs must post written notices of patient rights in places "likely to be noticed by patients waiting for treatment."

Before implementing any new policy, check the applicable state law and document every decision in writing, Throneberry advises.

It is also important to educate the staff on any changes in policy, she adds. "A surveyor may ask any staff member, 'What is your policy on advance directives?' "❖

—Paula DeJohn

Reference

Department of Health and Human Services, Centers for Medicare and Medicaid Services. State Operations Manual, Appendix L-Guidance for Surveyors: Ambulatory Surgical Centers. March 15, 2013:416.50(c).