### Nebraska Department of Health and Human Services

Paperless Surveys Coming Your Way

**By Kevin R. McManaman**

#### Nebraska Department of Health and Human Services has begun developing what will eventually become an entirely paperless survey system. Currently, volunteer facilities across the state are opting to participate in a pilot project that will eventually lead to such a system.

The system being developed will have similarities to those now being used in several other states, including the public posting on the internet of the internet of deficiencies, plans of correction/statements of compliance, and other information. Last late summer, the State of Kansas went live with such a system. Presently, edited versions of Nebraska facility deficiency statements are posted on the Medicare site, Nursing Home Compare. Similarly, since the Nebraska paperless system will consist of documents that are publically available, resident names and identifying information will not be included. The pilot system will involve a test. Volunteer facilities will receive a "test" email soon. This will allow them to see exactly what a facility will receive after a survey or complaint investigation has been conducted, including an enforcement letter, complaint letter, CMS-2567, E-2567 Provider Form, Notice of Disciplinary Action, and Request for Information Dispute Resolution. DHHS will send these in PDF format. Volunteer facilities have been asked to set up and monitor a generic e-mail address that won’t change with staff changes. Each time a statement of deficiency is sent, DHHS will include detailed instructions on how to respond electronically. Any plan of correction will be e-mailed back in PDF format, with the facility signing the first page and forwarding that back to the state. The 10 days for the return of a Plan of Correction will begin to run when the email is sent. Therefore, the Department will require that the e-mail address be accessible by two staff members such as the Executive Director, Director of Nursing, Office Manager, or someone similar. Facilities are being asked to check the email address daily, Monday through Friday, as a routine matter. Facilities can get more information and sign up for the pilot program by contacting the Department at (402)471-3324.

**Is Your Record Retention Policy Compliant with Nebraska Law?**

**By Jeanelle R. Lust**

Nebraska imposes these basic requirements for the retention, storage and destruction of resident medical records by facilities: 1. A nursing home must maintain a clinical record on all residents. Clinical records must contain at a minimum: A. Sufficient information to identify the resident; B. A record of the resident’s assessments, including those assessments performed by services under agreement with the facility; C. The plans of care and services including medication administration provided by facility staff and services provided under agreement with the facility; D. Interdisciplinary progress notes to include effects of care provided, residents’ response to treatment, change in condition, and changes in treatment; E. Medical practitioner orders which are signed and dated; 5. Medical practitioner orders which are signed and dated; 6. Allergies; 7. Person to contact in an emergency situation; 8. Name of attending medical practitioner; and 9. Advanced directives if available.

Resident clinical records must be maintained and protected for a period of at least five years or, in case of a minor, five years after the resident becomes of age under Nebraska law. The age of majority under Nebraska law is 19.

Facilities must safeguard clinical record information against loss, destruction, or unauthorized use. In addition, if facilities utilize computer records, safeguards to prevent unauthorized access, and to provide for reconstruction of information must be in place. Facilities must protect the confidentiality of all information contained in a resident’s records, regardless of the form or storage method of the records, except when release is authorized. Clinical records must be readily accessible.

If a facility closes, Nebraska law requires that all records of each resident be transferred to the health care facility to which the resident moves. All other resident records of a facility causing operation must be disposed of by shredding, burning, or other similar protective measures in order to preserve the resident’s right of confidentiality. Records or documentation of the actual fact of resident medical record destruction must be permanently maintained.
Health Care Reform and Its Effect on Post Acute and Long-Term Care

by Michael Khalili

President Obama’s masters of change has not just been lip service and change is exactly what has happened to health care. On March 21, 2010, the U.S. House of Representatives took two historic votes on health care reform. The first was on the health care reform bill previously passed by the Senate, the Patient Protection and Affordable Care Act (PPACA/H.R. 3962), which passed 219 to 212. The second vote was on the budget reconciliation package, the Health Care and Education Affordability Act (HCEAA/H.R. 4822), which passed 220 to 211, again largely along party lines. Since PPACA had passed the Senate on December 24, 2009, and no changes were made by the House, the bill was sent to the White House for the President’s signature and became law on March 23, 2010. PPACA contains the vast majority of the provisions constituting health care reform, including those affecting post acute and long term care. Included in the final health care reform bill are positive and negative provisions for post acute and long term care. Some positive provisions included:

• No targeted reductions to the skilled nursing facility market basket for Fiscal Year (FY) 2010 or FY 2011.

• Extension of the exceptions process for the Medicare Part B therapy cap until the end of 2010.

• Wyden MedPAC language stating that Medicaid must be taken into account during its analyses for providers like skilled nursing facilities.

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Requirements for Production of Medical Records by Jeanelle Lust

Under Title 175, Chapter 12-006.16C2 of the Nebraska Administrative Code, facilities must cooperate in determining the confidentiality of resident records except when authorized by transfer agreement to another health facility or health care facility, service, law, third party payment contract, or the resident or designee. Records are also subject to inspection by authorized representatives of the Department of Health and Human Services. The Department of Health and Human Services may impose one or several penalties, including a fine not to exceed $10,000 or revocation of license, for failure to follow proper procedures.

Resident Requests

If a resident or patient makes a written request for copies of his or her medical records, the facility must furnish the requested copies within 30 days after the request is received. In addition, if a resident submits a written request to examine his or her medical records the facility must “a) Make the medical records available for examination during regular business hours; b) Inform the patient if the records do not exist or cannot be found; c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the latest date, not later than twenty-one days after receiving the request, when the records will be available for examination.”

Subpoenas

If a facility receives a subpoena duce tecum for the production of medical records for use in a proceeding to which the facility is not a party, the facility should ensure that the request is not contact its attorney, and then satisfy itself that appropriate notice was given to the other side in the proceedings. If so, within 10 days of service of the subpoena, the facility may serve upon the party for whom the subpoena was issued a written objection to production of any or all of the designated materials or entry upon the premises. If the facility does not object to the subpoena, it shall comply with the request by the designated date or request more time, if necessary, from the party for whom the subpoena was issued. All records provided shall be produced as they are kept in the usual course of business or organized and labeled to correspond with the category in the demand. If a facility or facility feels as if the documents requested are privileged, it should object to the production of the documents.

Costs

A facility may charge for copies and/or subpoeas for the production of medical records for use in a proceeding to which the facility is not a party, the facility should ensure that the request is not contact its attorney, and then satisfy itself that appropriate notice was given to the other side in the proceedings. If so, within 10 days of service of the subpoena, the facility may serve upon the party for whom the subpoena was issued a written objection to production of any or all of the designated materials or entry upon the premises. If the facility does not object to the subpoena, it shall comply with the request by the designated date or request more time, if necessary, from the party for whom the subpoena was issued. All records provided shall be produced as they are kept in the usual course of business or organized and labeled to correspond with the category in the demand. If a facility or facility feels as if the documents requested are privileged, it should object to the production of the documents.

Health Care Reform

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• Elimination of Medicare Part D cost-sharing for federal and state beneficiaries covered by Medicaid under Sec. 1115 or 1915 waivers or under a 1915(i) state plan amendment, who otherwise would be admitted to a skilled nursing facility.

• Cost-sharing for dual eligible receiving services in a Medicaid managed care organization also are eliminated.

• Several provisions improving our nation’s health care work force programs including a demonstration project providing further training opportunities specifically for skilled nursing facility staff employed in long term care settings.

• The Community Living Assistance Services and Support Act (CLASSA), as amended, 42 U.S.C. 1396 et seq.

• A new Independent Medicare Advisory Board (IMAB) was created to make recommendations to Congress about issues, such as Medicare payment rates for assisted living facilities. IMAB will submit a list of recommendations to Congress, on which Congress can vote to approve or disapprove. Some providers, such as hospitals, received an exemption from IMAB until 2019. Uncommonly, skilled nursing facilities were not given the same exemption.

• Additional background check requirements for skilled nursing facility and nursing facility employees with direct patient access.

• Changes to the reporting of crimes requirements in the Elder Justice section.

• The impact on employers of the health care insurance requirements.