

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 131.000: OPERATION OF THE ADVOCACY OFFICE

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131.001: Purpose

105 CMR 131.000 sets forth standards and requirements for the receipt, investigation and resolution of complaints received by the Advocacy Office and for the conduct of discharge plan reviews.

131.002: Authority

105 CMR 131.000 are adopted pursuant to the authority of M.G.L. c. 111, § 51D.

131.003: Citation

105 CMR 131.000 shall be known and may be cited as 105 CMR 131.000: *Operation of the Advocacy Office*.

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131.004: Scope

105 CMR 131.000 applies to acute hospitals subject to licensing under M.G.L. c. 111, §§ 51 through 53 and further defined in 105 CMR 131.005.

Definitions

131.005: Definitions

Acute Hospital shall mean a hospital subject to licensing pursuant to M.G.L. c. 111, §§ 51 through 53 but shall not include:

- (1) Psychiatric Hospitals as defined in 42 CFR 412.23(a);
- (2) Rehabilitation Hospitals as defined in 42 CFR 412.23(b);
- (3) Alcohol/Drug Hospitals as defined in 42 CFR 412.23(c);
- (4) Chronic Care Hospitals; and
- (5) School and college infirmaries.

Adequate Discharge Planning means the development of and furnishing to Medicare patients in need of assistance with post hospital services or their authorized representatives, a discharge plan in conformance with the requirements of M.G.L. c. 111, § 51D, 105 CMR 131.001 *et seq.*, and 105 CMR 130.340 through 130.349 as may be in effect and amended from time to time.

Advocacy Office means the office established within the Department pursuant to M.G.L. c. 111, § 51D to receive, investigate and resolve complaints of violations of M.G.L. c. 111, § 51D, and review discharge plans pursuant to the provisions of M.G.L. c. 111, § 51D.

Contact Person means the person designated within each hospital pursuant to 105 CMR 131.124.

Denial of Admission means the failure of an acute hospital to admit or readmit a Medicare beneficiary who is in need of the acute level hospital services provided by that facility when a bed appropriate to the Medicare beneficiary's medical condition is available.

Department means the Massachusetts Department of Public Health.

Discharge plan means a written, comprehensive, individualized plan, furnished to Medicare patients in need of assistance with post hospital services, which meets the requirements of M.G.L. c. 111, § 51D, 105 CMR 130.001 *et seq.*, and 105 CMR 131.343 and 131.349.

Inappropriate Transfer means a transfer of a patient, who is in need of acute care, by an acute hospital, to another acute care facility, for which there is no sound medical reason. A transfer would not be inappropriate if the transferring acute hospital did not have an available bed appropriate for that patient's medical condition.

Individual Notice means the written notice provided by an acute hospital pursuant to the requirements of M.G.L. c. 111, § 51D and the provisions of these regulations, to each Medicare eligible person seeking services from that hospital.

Patient Representative means the person as defined in 105 CMR 130.340 who is acting on behalf of a Medicare patient.

Premature Discharge means the discharge of a Medicare patient prior to the time that the need for the patient's stay in an acute hospital has terminated.

131.005: continued

Posted Notice means the written notice posted in conspicuous locations by acute hospitals pursuant to the requirements of M.G.L. c. 111, § 51D and 105 CMR 131.000.

131.100: Prohibited Practices

No acute hospital shall impose any discriminatory restrictions or conditions relating to admission, availability of services, treatment, transfer or discharge, with respect to any patient, because that patient is a Medicare beneficiary, nor shall any acute hospital fail to provide adequate discharge planning in accordance with the requirements of M.G.L. c. 111, § 51D and the provisions of 105 CMR 130.340 through 130.349. Prohibited practices include, but are not limited to, any such discrimination based on the diagnostically related group classification of such beneficiary or any other criteria, including cost of treatment, severity of illness, and average length of stay, which are not equally applied to all patients with comparable medical needs seeking or receiving the services of the hospital.

131.101: Presumptions

There shall be a rebuttable presumption that a violation of M.G.L. c. 111, § 51D and 105 CMR 131.100 exists when any of the following has occurred:

(A) when a Medicare patient has been prematurely discharged from an acute hospital and within 15 days following the patient's discharge has died or the patient's medical condition has seriously deteriorated from a medical condition that should have been treated in an acute hospital and that condition was known or should have been known at the time of the patient's discharge.

(B) when there has been a readmission to an acute hospital within 15 days following a discharge for the same condition or conditions for which the patient was treated during the initial period of hospitalization.

(C) when the hospital has failed to provide adequate discharge planning and that failure has resulted in the patient being harmed or the likelihood of their being harmed.

(D) when a patient has been inappropriately transferred and the transfer has resulted in the patient being harmed or the likelihood of the patient being harmed.

(E) the denial of admission followed by the patient's death or deterioration of the patient's condition within 14 days of the denial.

131.110: Individual Notices

All acute hospitals shall provide each Medicare eligible person seeking inpatient services from that hospital with a written notice of the rights guaranteed under M.G.L. c. 111, § 51D. In providing the written notice required pursuant to 105 CMR 131.110 acute hospitals shall utilize the form set forth in Appendix A or an alternative notice form approved pursuant to 105 CMR 131.112, except that in the emergency department the hospital shall utilize the notice form set forth in Appendix B, or an alternative form approved pursuant to 105 CMR 131.112.

131.111: Individual Notices - Distribution

Individual notices shall be distributed to all Medicare beneficiaries seeking services through the admitting office and emergency room prior to or at the time of admission. Copies of individual notices shall be made available in outpatient departments by leaving a sufficient number in waiting areas and in receiving areas.

131.112: Individual Notices - Alternative Form

An acute hospital may apply to utilize a written notice form different from that set forth in Appendix A by submitting a request in writing to the Department. Said request shall include a copy of the notice form that the hospital proposes to utilize. Authorization to utilize an alternative form shall be granted only when the Department determines that the proposed notice is substantially identical in form and content to the notice set forth in Appendix A and the hospital has set forth good cause for its use of an alternative form.

131.113: Posted Notices

All acute hospitals shall conspicuously post a notice, of rights guaranteed to Medicare patients pursuant to M.G.L. c. 111, § 51D. In satisfying the requirements of this section the hospital shall utilize the form notice set forth in Appendix A, except that in the emergency department the hospital shall utilize the notice form set forth in Appendix B, or an alternative form approved pursuant to 105 CMR 131.112.

131.114: Posted Notices - Location

In satisfying the requirements of 105 CMR 131.113 acute hospitals shall post copies of the notice of rights in large print in the admitting areas, main lobbies, emergency rooms, outpatient departments, and in all major public areas on each floor of the hospital including but not limited to lounge areas, areas opposite points of access, and elevator areas.

131.115: Posted Notices - Alternative Form

An acute hospital may apply to utilize a posted notice form different from that set forth in Appendix A by submitting a request in writing to the Department. Said request shall include a copy of the notice form that the hospital proposes to utilize. Authorization to utilize an alternative form shall be granted only when the Department determines that the proposed notice is substantially identical in form and content to the notice set forth in Appendix A and that the hospital has set forth good cause for its use of a alternative form.

131.116: Translation of Notices

Acute hospitals shall translate the notices required pursuant to M.G.L. c. 111, § 51D and 105 CMR 131.110 and 131.113 into a language or languages other than English if such language or languages are spoken by at least 10% of the residents of the hospital's service area. Acute hospitals shall post said translated notices in the locations required by 105 CMR 131.114 and shall distribute copies of the translated individual notices in the manner required by 105 CMR 131.111.

131.117: Large Print Requirements

The notices required pursuant to 105 CMR 131.110 through 131.116 shall be in large print. For purposes of the requirements of 105 CMR 131.117 large print shall mean a type size of at least 14 point.

131.120: Filing of Complaints

Any person including but not limited to a Medicare patient, family member, or advocate may file a complaint alleging a suspected violation of M.G.L. c. 111, § 51D with the Advocacy Office. Complaints may be either in writing or communicated verbally.

131.121: Content of Complaints

To the extent possible, persons filing a complaint pursuant to these regulations shall specify the identity of the affected patient and the facts which form the basis of their belief that a violation has occurred.

131.122: Investigation

Upon receipt of a complaint alleging a violation of M.G.L. c. 111, § 51D the Advocacy Office shall conduct an investigation. The investigation shall be commenced without delay when there is a reasonable likelihood that the patient's health or safety may be in jeopardy. Hospital's shall cooperate with the Advocacy Office in the conduct of its investigation.

131.123: Notification

If the Department concludes that it has sufficient cause to credit the allegations of the complaint, it shall notify the hospital and allow the hospital sufficient opportunity to comment upon the complaint and the findings made by the Department.

131.124: Hospital Contact Person

Acute Hospitals shall designate a contact person for the purpose of receiving all notifications from the Advocacy Office required pursuant to 105 CMR 131.001 *et. seq.* including but not limited to requests for records made by the Advocacy Office pursuant to 105 CMR 131.206. Nothing in the requirements of this section shall be construed as limiting the right and ability of the Advocacy Office, in the conduct of any investigation, to contact any individuals with information relevant to said investigation.

131.125: Resolution

If after the completion of its investigation the Advocacy Office determines that there exists sufficient cause to credit the allegations of the complaint, it shall utilize good faith efforts to resolve the complaint through negotiation. Any such negotiated resolution may include the execution of a written agreement between the Department and the hospital setting forth the terms of the agreement, including but not limited to, those steps that the hospital will take to prevent future violations.

131.126: Failure To Reach Negotiated Resolution

In the event that a satisfactory negotiated resolution cannot be reached in accord with the provisions of 105 CMR 131.124 the Department may refer the matter to the Department of the Attorney General for appropriate legal action or to the Health Care Financing Administration of the United States Department of Health and Human Services.

131.127: Notice of Final Disposition

Upon the completion of its investigation and following final disposition of the complaint, the Department shall communicate its findings in writing to the hospital and the complainant. To the extent possible, the patient also shall be notified of the findings of the Department.

131.201: Right To Meeting

If a patient or the patient's representative indicates that (s)he does not agree with the patient's discharge plan the hospital shall insure that the discharge planning coordinator and the patient's physician meet with the patient or the patient's representative in an effort to develop a plan that is acceptable to the patient. The meeting shall take place by not later than noon the working day following the patient's receipt of the discharge plan.

131.202: Right To Advocacy Office Review - Medicare Patients

If after the meeting required pursuant to 105 CMR 131.201, any Medicare patient who is in need of assistance with post hospital services, or any patient representative acting on behalf of a Medicare patient, who does not agree with the discharge plan furnished to the patient pursuant to the requirements of M.G.L. c. 111, § 51D and 105 CMR 130.340 through 130.349, may request that the Advocacy Office review the discharge plan.

131.203: Timely Requests For Reviews

Except as provided in 105 CMR 131.205, if a request to the Advocacy Office for the review of a discharge plan has been made by noon of the first working day following the patient's or patient representative's receipt of the plan, the hospital shall not charge the patient for the patient's continued hospital stay from the scheduled date of discharge until noon of the day after the patient is notified of the Advocacy Office's decision approving the discharge plan.

131.204: Right To Advocacy Office Review - Hospital

Any acute hospital, after having provided a Medicare patient or the patient's representative with a discharge plan pursuant to the requirements of M.G.L. c. 111, § 51D and 105 CMR 130.340 through 130.349, may request that the Advocacy Office review a patient's discharge plan; provided that the hospital has afforded the patient or the patient's representative the opportunity for a meeting as provided by the requirements of M.G.L. c. 111, § 51D, 105 CMR 130.340 through 130.349, and the hospital's staff knows or has reason to know that the patient or the patient's representative is dissatisfied with the plan and has not requested or will not be requesting a discharge plan review.

131.205: Failure To Hold Meeting

In the following circumstances the patient's failure to submit a request for the review of a discharge plan by noon the first working day following the receipt of the plan shall not result in the request being untimely pursuant to 105 CMR 131.202:

- (1) the patient or the patient's representative has promptly indicated their disagreement with the plan to the hospital;
- (2) the hospital has failed to hold the meeting required by 131 CMR 131.204 by noon the first working day following the patient's receipt of the discharge plan, and;
- (3) the failure to hold the meeting was through no fault of the patient or the patient's representative.

131.206: Filing Of Requests For The Review Of Discharge Plans

Any Medicare patient, the patient's representative, or hospital contact person designated pursuant to 105 CMR 131.124, may request a review of a patient's discharge plan by telephoning the Advocacy Office. Hospital staff, if requested to do so by an individual patient, shall notify the Advocacy Office by telephone that a patient is requesting a review of the patient's discharge plan.

131.207: Notification To Non-Requesting Party

Upon receipt of a request to review the discharge plan of a Medicare patient the Advocacy Office, without undue delay, shall notify the non-requesting party that a request has been made for a discharge plan review. The notification required pursuant to 105 CMR 131.207 may be made verbally.

131.208: Patient Records - Request

After receipt of a request to review a Medicare patient's discharge plan, the Advocacy Office, without undue delay shall request the hospital to forward those portions of the patient's medical and other records that the Advocacy Office deems necessary for the conduct of the review of the patient's discharge plan. The Advocacy Office's request for records shall be made via telephone to the hospital's contact person.

131.209: Patient Records - Delivery

Upon receipt of the request for a patient's records from the Advocacy Office, the hospital shall deliver a copy of the requested records to the Advocacy Office by the close of business on the working day that the request has been made.

131.210: Conduct Of Discharge Plan Reviews

The Advocacy Office shall either approve or disapprove the discharge plan within one working day of receiving the patient's records requested pursuant to 105 CMR 131.206. In conducting the review of a Medicare patient's discharge plan, the Advocacy Office shall determine whether the patient has received a written comprehensive, individualized discharge plan that is consistent with medical discharge orders and identified patient needs, and whether the requirements of M.G.L. c. 111, § 51D, 105 CMR 130.343 and 130.345, and 105 CMR 131.201 *et seq.* have been satisfied.

131.211: Verbal Notification Of Decision - Approval

Upon the conclusion of the review of a discharge plan the Advocacy Office shall verbally notify the Medicare patient or the patient's representative and the hospital's contact person designated pursuant to 105 CMR 131.124 of its approval of the discharge plan. The patient's discharge may occur pursuant to the approved plan after noon of the day following the notification of the Advocacy Office's decision.

131.212: Verbal Notification Of Decision - Disapproval

If the Advocacy Office does not approve the discharge plan, it shall inform both the hospital and the patient or the patient's representative of the problems needing correction and the patient shall not be discharged or charged for inpatient hospital services until an alternative plan is developed to resolve the problems identified by the Advocacy Office. The requirements of M.G.L. c. 111, § 51D, 105 CMR 130.340 through 130.349, and 105 CMR 131.201 through 131.211 that were applicable to the original discharge and discharge plan shall apply to the alternative plan.

131.213: Written Notification Of Decision

As soon as possible following the Advocacy Office's verbal notification of its decision, it shall transmit to the hospital and the patient or the patient's representative written notification of its decision.

131.301: Referral To Other Agencies

Notwithstanding any determinations made by the Department pursuant to 105 CMR and M.G.L. c. 111, § 51D, the Department may refer complaints to appropriate agencies including, but not limited to, the Massachusetts Board of Registration and Discipline in Medicine and the Peer Review Organization. Possible violations of criminal statutes may be referred to appropriate law enforcement agencies.

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131.302: Additional Remedies

Nothing contained in 105 CMR 131.001 *et seq.* shall prevent the Department from determining that a violation of 105 CMR 131.001 *et seq.* or M.G.L. c. 111, § 51D, constitutes a violation of any other statute or regulation, and nothing contained herein shall preclude the Department from utilizing any other remedies that may be available to it including, but not limited to, those necessary to protect the health and safety of patients on an emergency basis.

131.303: Non-Limitation of Remedies

Nothing contained in 105 CMR 131.001 *et seq.* shall be construed as limiting any other rights or remedies provided by law to Medicare patients, or to limit the applicability of M.G.L. c. 231, § 60B, or to give rise to or limit an otherwise available cause of action in negligence or medical malpractice.

REGULATORY AUTHORITY

105 CMR 131.000: M.H.L. c. 111, §§3 and 51D.