

paragraph “(a)(2)” of this section. The correct reference to the written certification is described in paragraph (2) of § 412.30(b). Accordingly, we are proposing to make a technical correction by changing the current reference to paragraph (a)(2) in paragraph (b)(3) to state “The written certification described in paragraph (b)(2) * * *”.

Section 412.30(d)(2)(i) contains an incorrect reference to the definition of new bed capacity under paragraph “(c)(1)” of this section. The correct reference to the definition of new bed capacity is paragraph (d)(1). Accordingly, we are proposing a technical correction to change the current reference to paragraph (c)(1) in paragraph (d)(2)(i) to state “* * * under paragraph (d)(1) of this section.”

Revision of the Definition of Discharge in § 412.602

According to § 412.602, a discharge has occurred when the patient has been formally released from the hospital, or has died in the hospital, or when the patient stops receiving Medicare—covered Part A inpatient rehabilitation services. We are proposing to amend § 412.602 by revising the definition of “Discharge.” Accordingly, the revised definition would read as follows:

Discharge. A Medicare patient in an inpatient rehabilitation facility is considered discharged when—

(1) The patient is formally released from the inpatient rehabilitation facility; or

(2) The patient dies in the inpatient rehabilitation facility.

General Requirements for Payment Under the Prospective Payment System for Inpatient Rehabilitation Facilities in § 412.604

In § 412.604, “General requirements,” in paragraph (a)(2) introductory text, we are proposing to change the word “we” to “CMS or its Medicare fiscal intermediary” to read as follows:

“If an inpatient rehabilitation facility fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare Part A fee-for-service beneficiaries, CMS or its Medicare fiscal intermediary may, as appropriate—”

Addition of Requirement To Give Patient the Privacy Act Statement in § 412.608

Section 412.608 specifies that before performing the IRF-PAI assessment, the IRF must inform the patient of the rights contained in this section. The rights specified in § 412.608 are—

(1) The right to be informed of the purpose of the collection of the patient assessment data;

(2) The right to have the patient assessment information collected be kept confidential and secure;

(3) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(4) The right to refuse to answer patient assessment questions; and

(5) The right to see, review, and request changes on his or her patient assessment.

In addition to the rights specified in § 412.608, a patient has privacy rights under the Privacy Act of 1974 (5 U.S.C. § 552a(e)(3)), and 45 CFR 5b.4(a)(3). The Privacy Act and 45 CFR 5b.4(a)(3) require that an individual be informed under what authority, and for what purpose, individually identifiable information is being collected by a Federal agency and maintained in a system of records. In order to ensure that an IRF complies with the Privacy Act of 1974, and 45 CFR 5b.4(a)(3), we are proposing that before performing the IRF-PAI assessment, an IRF clinician must give each Medicare inpatient two forms. We have published these forms in Appendix B “Inpatient Rehabilitation Facility Patient Privacy Forms” of this proposed rule. In addition, we are proposing that the form entitled “Privacy Act Statement—Health Care Records” is a detailed description of patient privacy rights under the Privacy Act of 1974. Also, we are proposing that the form entitled “Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF-PAI) Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities” is the plain language equivalent of the Privacy Act Statement—Health Care Records. Additionally, we are proposing that by giving both of these forms to a patient before starting the IRF-PAI assessment, the IRF would fulfill the requirement that the patient be informed of the five rights specified in § 412.608.

Accordingly, we are proposing to amend § 412.608 to read as follows:

Section 412.608 Patients Rights Regarding the Collection of Patient Assessment Data

(a) Before performing an assessment using the patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient each of these forms—

(1) The Privacy Act Statement—Health Care Records; and

(2) The Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF-PAI) Privacy Act Statement—Health Care Records.

(b) The Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF-PAI) Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities is the plain language equivalent of the Privacy Act Statement—Health Care Records.

(c) By giving the Medicare inpatient the forms specified in paragraph (a) of this section the inpatient rehabilitation facility has informed the Medicare patient of—

(1) His or her privacy rights under the Privacy Act of 1974 and 45 CFR 5b.4(a)(3); and

(2) The following rights:

(i) The right to be informed of the purpose of the collection of the patient assessment data.

(ii) The right to have the patient assessment information collected be kept confidential and secure.

(iii) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations.

(iv) The right to refuse to answer patient assessment questions.

(v) The right to see, review, and request changes on his or her patient assessment.

(d) The patient rights specified in this section are in addition to the patient rights specified in § 482.13 of this chapter.

By complying with the requirements specified in revised § 412.608 the IRF has not met the separate requirement in 45 CFR 164.520 entitled “Notice of privacy practices for protected health information.” Section 164.520 requires that a health plan or health care provider give patients a Notice of Privacy Practices that must describe the health plan’s or health care provider’s own uses and disclosures of protected health information, and the individual rights that patients have with respect to their protected health information.

When the IRF-PAI Must Be Completed (§ 412.610)

According to § 412.606(b), an IRF must use the IRF-PAI to assess Medicare Part A fee-for-service inpatients. Section 412.610(c)(1)(i)(C) specifies that the IRF-PAI for the admission assessment “Must be completed on the calendar day that follows the admission assessment reference day.” In order to clarify that