

Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" is the simplified plain language summary of the Privacy Act Statement—Health Care Records. We proposed to require that both of these forms be given to a patient before beginning the IRF-PAI assessment. These actions on the part of an IRF would fulfill the requirement that the patient be informed of the five rights specified in § 412.608. In addition, in this final rule, we have made technical changes to the proposed § 412.608. We have deleted proposed § 412.608(c) because it was redundant of proposed § 412.608(a)(2), and have redesignated proposed § 412.608(d) as § 412.608(c) and proposed § 412.608(e) as § 412.608(d). We note that when an IRF clinician gives a patient the forms entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" and the "Privacy Act Statement-Health Care Records" prior to performing an assessment, these forms do not satisfy the privacy provisions contained in the HIPAA Privacy Rule (65 FR 82462 as modified by 67 FR 53182). For example, these forms do not meet the privacy notice requirements of the HIPAA Privacy Rule (*see* 45 CFR 164.520).

Health plans and health care providers must meet the notice requirements of the HIPAA Privacy Rule by giving a Notice of Privacy Practices to their patients. The Notice of Privacy Practices describes a health plan or health care provider's uses and disclosures of protected health information and the individual rights that patients have with respect to their protected health information.

Comment: One commenter suggested adding the text, "simplified plain language," to the subtitle of the form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities."

Response: We agree with the commenter and have revised the title of the "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" to include the phrase "Simplified Plain Language" as a subtitle.

Comment: One commenter requested that the two patient rights forms be posted on the IRF PPS website and that they also be made available in Spanish.

Response: We agree with the commenter and will post the two privacy forms on the IRF PPS website and make them available in Spanish.

Comment: We received one comment concerning patients' rights. The commenter supported the proposed change, however, several members of

the commenter's organization have raised concerns about an additional paperwork burden.

Response: We disagree with the commenter and estimate that it will take no more than one minute to document the fact that the IRF has given a patient a copy of his or her rights, even assuming that the rights statement is the only handout. We anticipate that the rights statement will be one of several handouts that a patient would receive and that as a matter of prudent business and medical procedures, facilities have a mechanism in place to document that patients have been given all the necessary paperwork.

C. When the IRF-PAI Must Be Completed

Under existing § 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)(A) specifies that the admission assessment covers the first 3 calendar days of the inpatient's current IRF Medicare Part A fee-for-service hospitalization. Section 412.610(c)(1)(i)(B) specifies that the admission assessment reference date is the third day of the 3-day admission assessment time period. 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.

We are concerned that IRFs are interpreting § 412.610(c)(1)(i)(C) to mean that they may not start to record data on the IRF-PAI before the calendar day that follows the admission assessment reference day. This interpretation is not our intent. The "completion requirement" of the IRF-PAI indicates the date that the IRF's staff must have completed its recording on the IRF-PAI of the assessment data that the IRF's clinical staff obtained during an assessment of the inpatient that was performed during the admission assessment time period. In other words, the date when the IRF-PAI must be completed is the deadline date when the process of recording data on the IRF-PAI must be finished. The IRF's staff is permitted to enter assessment data on the IRF-PAI prior to the deadline date.

D. Recording IRF-Data Based on a Patient's Performance

How data are recorded on the IRF-PAI is specified in the IRF-PAI item-by-item guide, entitled the "IRF-PAI Training Manual Revised 01/16/02." The instructions contained in the IRF-PAI item-by-item guide are, when possible, very similar to the rules for

coding the patient assessment instrument that we used as the model for the IRF-PAI. The model for the IRF-PAI was the patient assessment instrument published by Uniform Data System for Medical Rehabilitation (UDSMr).

The UDSmr rules for coding their assessment instrument specify that an item's score should reflect an inpatient's lowest level of functioning. Consequently, in order to be consistent with how an inpatient's functional performance was scored on the UDSmr patient assessment instrument, the IRF-PAI item-by-item guide, likewise, specifies that a patient's assessment must indicate the patient's lowest level of functioning.

During the admission assessment, an IRF clinician records different types of data on the IRF-PAI. We believe that the sources of the data recorded in the categories of the IRF-PAI entitled "Identification Information," "Admission Information," and "Payer Information" allows an IRF to quickly obtain and record these data. For these categories of data, the source of the data may be the patient, the patient's medical record, other patient documents, the patient's family, or a person that has personal knowledge of the patient.

In order to complete the data for the IRF-PAI categories entitled "Function Modifiers" and "FIM™ Instrument," the clinician observes the patient's functional performance over the admission assessment time period, and makes clinical judgments regarding the patient's performance. Consequently, due to how the data for the Function Modifiers and FIM™ categories are obtained, we believe it is the time span that it takes to assess the patient's functional performance that will usually determine how long it takes to complete the admission assessment.

Page III-3 of the IRF-PAI manual states that when determining the level of a patient's functional performance, the clinician is to "record the lowest (most dependent) score." We believe that the patient's functional performance improves in the time span between the patient's admission and discharge from the IRF. We also believe that on the patient's admission day and for the following next few days, a patient's functional performance is poor in comparison to functional performance on subsequent days of the patient's current IRF hospitalization. Therefore, during the part of the admission assessment that is the first or second day of the patient's current IRF hospitalization, we believe that a patient's functional performance will usually be scored as indicating the most