Guidance on Providing Dialysis to Acute Kidney Injury Patients

In recent years there have been an increasing number of kidney patients who are certified as having end-stage renal disease (ESRD) but who subsequently recover renal function. According to the Forum of ESRD Networks, the reported rate of recovery of renal function for Medicare patients who are declared to have ESRD within the first year of dialysis increased nationwide from about 3% to over 6% between 1999 and 2009. This clinical scenario may occur when there is diagnostic uncertainty arising from the clinical presentation, subsequent evaluation, and clinical course which leads the physician to the “best assessment” of ESRD. While patients with certain diagnoses may, after long intervals of renal replacement therapy, recover function, other patients with acute kidney injury (AKI) may be misclassified as ESRD as a result of regulatory considerations. Given that the fraction of patients previously designated as having ESRD with “recovered function” is rising steadily, this issue has appropriately come under increasing scrutiny by the Centers for Medicare and Medicaid Services (CMS) and the Forum of ESRD Networks.

Certification of patients occurs via the completion and signature by a nephrologist or other physician of the ESRD Medical Evidence Report, commonly known as the 2728 form. The following language immediately precedes the Attending Physician’s Signature of Attestation on the 2728 form:

*I certify, under penalty of perjury, that the information on this form is correct to the best of my knowledge and belief. Based on diagnostic tests and laboratory findings, I further certify that this patient has reached the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplant to maintain life. I understand that this information is intended for use in establishing the patient’s entitlement to Medicare benefits and that any falsification, misrepresentation, or concealment of essential information may subject me to fine, imprisonment, civil penalty, or other civil sanctions under applicable Federal laws.*

As noted above, functional recovery could occur as long as one year after the patient has been certified as having ESRD (and in fact literature indicates that up to one-third of the patients recovering their renal function do so between 90 days and a year after function loss). However, when the patient’s renal function has recovered, it renders the ESRD certification problematic. At best, it is a well-intentioned error in judgment; at worst, it is a misrepresentation of the patient’s diagnosis. For the former, certifying ESRD is in alignment with the above attestation language; in the latter, it is a clear violation of federal law. In other
words, acute kidney injury requiring dialysis is not a reason for attesting that a patient has ESRD and signing the 2728 form.

For these reasons, RPA offers the following guidance to nephrologists and other physicians completing the 2728 ESRD certification form:

- Completion of the 2728 form must be regarded by the attending physician as a federal document that attests to that patient’s eligibility for a federal entitlement program;

- Attending physicians should realize that there is a 45-day period before which completion of the 2728 form is required, and as such, when arrangements can be made for dialysis facilities to accept these patients, attending physicians should make use of the 45-day period if necessary and not sign the form in haste;

- If the patient is presented to the attending physician with a diagnosis of AKI, that physician should wait before signing the form (in fact, the form itself notes in the instructions not to complete the form for those patients who are in “acute renal failure”—ARF, a term that is often used interchangeably with AKI);

- It is incumbent upon attending nephrologists who examine the patient to ensure that individuals responsible for discharging patients understand the issues surrounding reimbursement for services provided to these patients, and most notably that AKI services are not covered under the Medicare entitlement, regardless of whether the patient is over 65 years old;

- Medical directors and attending physicians should deliberate very carefully before accepting patients from outside of their normal service area without a completed 2728 form;

- It is essential to bear in mind that the 2728 form is designed to determine eligibility for Medicare benefits and that commercial insurance patients or patients under hospital contract do not require a 2728 form to be completed. Commercial patients require prior authorization under any circumstance but it should be clear to the insurer that the patient is being treated for acute kidney injury;

- While listing acute kidney injury as a diagnosis for obtaining Medicare benefits is not feasible, RPA is investigating how to obtain coverage for a current Medicare beneficiary for AKI-related outpatient dialysis.

- Possible options available for having the patient dialyzed when the diagnosis of ESRD has not been established include the creation of an agreement between the hospital and the dialysis provider for provision of dialysis services for a limited time period, if the patient does not have insurance. In case of private insurance, the dialysis provider and the insurance company may agree to cover the services for a limited time period, until either the patient recovers renal function or a diagnosis of ESRD is made.
If, in the attending physician's best medical judgment, the patient will not recover renal function and has in fact reached end-stage, the physician should sign the 2728 form without fear of retribution. In general, government oversight bodies are not seeking to criminalize attending physicians when honest errors in diagnosing a kidney disease patient occur. However, completion of the 2728 ESRD Medical Evidence Report should be taken very seriously, and attending physicians completing the form must employ their best medical judgment in assessing whether the patient has ESRD, AKI, or CKD.

Any questions or comments regarding this document should be directed to RPA’s Director of Public Policy, Rob Blaser, at 301-468-3515, or by email at rblaser@renalmd.org.