



Liberty Place, Suite 700  
325 Seventh Street, NW  
Washington, DC 20004-2802

(202) 638-1100 Phone  
www.aha.org

June 9, 2003

The Honorable Tommy Thompson  
Secretary, Department of Health and Human Services  
Hubert H. Humphrey Building, Room 600  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Thompson:

On behalf of our nearly 5,000 hospitals, health systems, networks, and other providers of care, the American Hospital Association (AHA) is encouraging the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) to modernize the 75% Rule pertaining to Inpatient Rehabilitation Facilities (IRF).

In order to be eligible to bill Medicare under the IRF Prospective Payment System (PPS), 75% of a rehab facility's patients must be treated for selected conditions known as the HCFA-10. The HCFA-10, selected in 1983, have never been updated. Since then, many new rehab therapies have become medically viable and provide a valuable benefit to inpatient rehab patients. Unfortunately, the 75% Rule remains unchanged. In addition, this rule is inconsistent with the IRF Prospective Payment System (PPS) implemented in January 2002, since only a subset of the conditions CMS has approved for payment under the IRF-PPS (the HCFA 10) are allowable toward compliance with the 75% Rule.

In recent years, the Rule has not been applied consistently across the country by CMS Fiscal Intermediaries. In 2002, these inconsistencies led CMS to suspend enforcement of the Rule while they assessed its implementation. CMS Administrator Tom Scully has stated his intention to "aggressively" apply the Rule beginning October 1, 2003, and cautioned that providers found to be noncompliant may become ineligible for the IRF-PPS. The proposed rule for the IRF-PPS, issued on May 16, 2003, includes Mr. Scully's plan to reinstate the Rule. The proposed rule also includes a perplexing assessment by CMS of the field's level of compliance with the 75% Rule. We find it irresponsible that CMS has chosen an excessively narrow definition of compliance that rules out the vast majority of the field, which has caused tremendous concern among providers.

Access to medically appropriate inpatient rehab for Medicare beneficiaries must be preserved. If CMS reinstates the 75% Rule using an extremely strict interpretation of which treatments may count toward compliance with the Rule, Medicare beneficiaries recovering from conditions such as cancer, organ transplants, and heart surgery will lose access to specialized, post-acute rehabilitation. Maintaining an outdated system is not in the best interest of patients who need this distinctive form of care. Please consider modernization of the 75% Rule instead of enforcing an outdated and inconsistent standard.

Sincerely,

Rick Pollack  
Executive Vice President

cc: Thomas A. Scully, CMS Administrator