

May xx, 2004

The Honorable Tommy Thompson
Secretary
Department of Health and Human Services

Room 600
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Mark McClellan
Administrator
Centers for Medicare and Medicaid
Services
Room 314G
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Thompson and Administrator McClellan:

We would like to thank you for working with us throughout the rulemaking process on what has become known as the “75% Rule” regarding Inpatient Rehabilitation Facility (IRF) classification. Unfortunately, in spite of our open dialogue, the April 30th final IRF rule was issued without the benefit of an Institute of Medicine (IOM) study and, therefore, has the potential to jeopardize patients’ access to the highest quality of care.

As you know, letters signed by 75 Senators and 230 Members of the House on October 31, 2003, asked the Department of Health to commission an IOM study to determine how to revise the 75% Rule prior to finalizing the rule. A similar directive was included in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (H.R. 1) and the Consolidated Appropriations Act of 2003 (H.R. 2673). Despite Congress’ actions, the 75% Rule was solidified without a thorough, independent assessment by medical experts.

We continue to believe that additional information must be gathered and an autonomous analysis must be conducted before the 75% Rule is re-implemented. Therefore, we respectfully request that CMS maintain the current moratorium on enforcement and direct its fiscal intermediaries not to issue Local Medical Review Policies (LMRPs) until an IOM study is conducted. If HHS is unable to accommodate this request, we may need to pursue legislative remedies.

Our IRF policies are critically important to the health and well-being of our constituents and ought to reflect the findings of an IOM study. We look forward to continuing to work with you.

Sincerely,