

May 5, 2004

The Honorable Tommy G. Thompson, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Thompson:

We are writing to express our concerns with the May 7, 2004, Final Rule on what has become known as the "75-percent rule" regarding Inpatient Rehabilitation Facility (IRF) classification. We appreciate your openness and willingness to communicate with us throughout the rule-making process. And while we also appreciate that the final rule is slightly better than the initially proposed one, we had hoped the final rule would have had more significant improvements. Although we are certain that the goal of the U.S. Department of Health and Human Services was not to jeopardize patients' access to the highest quality of care, we are concerned that this rule could have such an unintended effect.

As you know, letters signed by 75 Senators and 230 House Members on October 31, 2003, asked that a study be conducted by the Institute of Medicine (IOM) to look at how to revise the rule and to determine which conditions are clinically appropriate for inclusion in the rule. Language was also included in both the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (PL 108-173) and the Consolidated Appropriations Act of 2003 (PL 108-199) dealing with the 75-percent rule. Both bills call on the Secretary to delay implementation of the rule while a study is underway. The omnibus bill further calls on the Secretary to delay implementation of Local Medical Review Policies (LMRPs) concerning medical necessity during the study period. We hope these requests can be revisited.

We, therefore, respectfully request that, until a study is conducted, the Centers for Medicare & Medicaid Services maintain the current moratorium on enforcement and direct the fiscal intermediaries not to issue the LMRPs. These policies are critically important to our seniors and persons with disabilities whom we are here to represent; and consequently, they must reflect the consensus opinion of independent medical rehabilitation experts convened by IOM.

Thank you for your consideration of this request. We look forward to continuing to work with you to resolve this issue.

Sincerely,
