House Ways and Means Committee Leadership

1. The Honorable Bill Thomas
   Chairman, House Ways and Means Committee
   U.S. House of Representatives
   1102 Longworth House Office Building
   Washington, DC 20515

2. The Honorable Charles Rangel
   Ranking Member, House Ways and Means Committee
   U.S. House of Representatives
   1106 Longworth House Office Building
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Senate Finance Committee Leadership

1. The Honorable Charles Grassley
   Chairman, Senate Finance Committee
   United States Senate
   219 Dirksen Senate Office Building
   Washington, DC 20510

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   Ranking Member, Senate Finance Committee
   United States Senate
   219 Dirksen Senate Office Building
   Washington, DC 20510

October XX, 2006

The Honorable Bill Thomas
Chairman, House Ways and Means Committee
1102 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Thomas:

I am writing to urge you to seek a legislative solution this year to preserve and protect patient access to Inpatient Rehabilitation Facilities (IRFs). It is critical that Congress hold the 75% Rule threshold at the current 60 percent level until research is completed that definitively demonstrates the clinical importance of rehabilitation services for patients in the most appropriate setting. In addition, I ask that you take a leadership role in ensuring that current limits on patient access to IRFs that are occurring as a result of inconsistent local coverage determination (LCD) enforcement across the nation and within individual markets are eliminated. Finally, I ask that Congress preserve a full inflationary update in order to continue providing the highest quality care possible to patients in need of IRF services.

As you may be aware, the multi-year phase-in of the 75% Rule continues to limit the ability of IRFs to treat patients needing intensive medical rehabilitation. The phase-in is in its second year with a threshold of 60 percent and is currently scheduled to reach 75% in 2008. The Deficit Reduction Act (DRA) extended the 60 percent threshold an additional year through June 2007, which has helped protect both Medicare and non-Medicare access to needed rehabilitative care. Yet, many thousands of patients still have been denied access due to the restrictive nature of this regulation. And it will only get worse.

A June 2006 analysis by The Moran Group found that 88,000 fewer patients were treated in IRFs in the first two years of the 75% Rule phase-in. This alarming assessment significantly exceeds CMS' estimate that only 7,000 fewer patients would be treated during the first two years of phase-in. Even more troubling is that we expect even greater reductions in access should the threshold move to 65 percent in July 2007. **Clearly, CMS has gone too far in restricting access to care for patients in need of rehabilitation services.**

By extending the 60 percent threshold in the DRA, Congress clearly expressed its ongoing concerns about the 75% Rule. This extension provides welcome protection for some patients needing IRF-level care and provides an opportunity for research to be conducted on effective and efficient treatments for post-acute rehabilitation patients. Numerous research studies are underway designed to aid policymakers working to modernize the 75% Rule and related policies. Preliminary results are expected in early 2007 and will be featured during a February 2007 research symposium in Washington. **Holding the 75% Rule at the current level while this research is pursued is prudent policymaking and is essential to ensure access to care is not further restricted in an arbitrary way.**

Many IRFs also are struggling with excessive and unwarranted LCDs being enforced by CMS' contract fiscal intermediaries (FIs). This year, FI probe audits have produced shocking denial rates, ranging from 25 percent to 90 percent. In fact FIs are denying Medicare payment to a broad array of diagnoses, *including* cases within the 75% Rule's qualifying conditions. The IRFs undergoing these audits are in compliance with the 75% Rule, and many of these FI denials are being appealed and overturned.

The combined impact of the 75% Rule *and* LCD enforcement already has produced IRF closures in 2006, with more pending. LCD-related disruptions are greatest in communities where inconsistent medical necessity standards are being imposed. IRFs in these communities are struggling with an uneven regulatory playing field that is causing confusion for patients and referring physicians who cannot understand the inconsistent levels of access among local IRFs. **This harsh and inconsistent policy enforcement must be stopped.**

Finally, despite these considerable strains CMS already is imposing on the IRF field, the agency eliminated the full inflationary update (3.3 percent) for fiscal year 2007. Instead, CMS implemented an across-the-board payment cut that results in a miniscule update for 2007 – an increase of only 0.7 percent. This policy decision reinforces the agency's interest in continuing to reduce access to IRF-level care through the regulatory process. Now is not the time for further punitive policy changes for IRFs. Now is the time to develop evidence-based policy that can help modernize patient criteria for inpatient rehabilitation and other post-acute settings. Therefore, **receiving a full market-basket update and ensuring accurate coding adjustments would help ensure that IRFs are reimbursed adequately and are able to deliver care safely.**

I stand ready to work with you to enact legislation by the end of the year to address these IRF issues this year. I support legislation that would hold the 75% Rule threshold at the 60 percent level until research is completed, end the inconsistent LCDs, and ensure that IRF payments are not further reduced. Thank you very much for your consideration.

Sincerely,

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Member of Congress