



American Hospital
Association

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June 21, 2007

Leslie Norwalk, Esq.
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: (CMS-1551-P) Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Fiscal Year 2008; Proposed Rule (Vol. 72, No. 88), May 8, 2007

Dear Ms. Norwalk:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 37,000 individual members, including 1,228 inpatient rehabilitation facilities, the American Hospital Association (AHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule for the fiscal year (FY) 2008 inpatient rehabilitation facility prospective payment system (PPS). In particular, we would like to urge regulatory action on the "75% Rule."

CMS should identify the clinical characteristics of patients who currently fall outside of the qualifying conditions and are appropriate for hospital-level inpatient rehabilitation, as recommended by the Medicare Payment and Advisory Commission (MedPAC). We share MedPAC's view that the Rule's current diagnosis-based structure is inadequate to "identify all patients who need, can tolerate, and benefit from intensive rehabilitation." CMS should expand the qualifying conditions based on key clinical indicators of medical necessity for inpatient rehabilitation patients who today are inappropriately diverted to a less-intensive setting due to the Rule's constraints. Doing so would reduce inappropriately denied admissions for medically necessary patients seeking care in the nation's inpatient rehabilitation hospitals and units. Systematic, timely review and modernization of the qualifying conditions should be conducted by CMS in collaboration with independent researchers; clinical experts including referring physicians, physiatrists, rehabilitation nurses and therapists; and inpatient rehabilitation providers.



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We also are concerned about the pending termination of the 75% Rule's comorbidities provision, which enables inpatient rehabilitation patients to count under the rule based on selected, secondary medical characteristics. This provision is set to expire on July 1, 2008 when the 75% Rule is fully phased-in. Under this temporary provision, a patient may count toward 75% Rule compliance if he/she is admitted for a comorbidity that falls within one of the 13 qualifying conditions and causes a significant decline in the patient's functional ability. CMS' analysis found that 7 percent of cases from July 2005 through June 2006 – approximately 31,000 patients – qualified under the 75% Rule through the comorbidities provision.

Termination of the comorbidities provision would have a significant negative impact on this large group of patients with complicating medical conditions that require medical oversight by a physician and the specialized, advanced nursing care and therapy services found in inpatient rehabilitation hospitals and units. Given the compromised health status and functional level of this population, it would be inappropriate to deny them access to the inpatient rehabilitation setting. We urge CMS to amend the 75% Rule in the FY 2008 inpatient rehabilitation facility PPS final rule to permanently include comorbidities among qualifying cases.

We look forward to continued collaboration on this matter. If you have any questions about our comments, please feel free to contact me or Rochelle Archuleta, senior associate director for policy, at (202) 626-2320 or rarchuleta@aha.org.

Sincerely,

Rick Pollack
Executive Vice President