



**American Hospital  
Association**

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August 24, 2007

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

**RE: *CMS-2268-P, Medicare Program; Establishment of Revisit User Fee Program for Medicare Survey and Certification Activities; Proposed Rule (Vol. 72, No. 125), June 29, 2007***

Dear Mr. Kuhn:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 37,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule to establish a revisit user fee program for Medicare survey and certification activities.

This proposed rule would allow CMS to charge health care providers user fees for revisit surveys when providers are cited for deficiencies in initial certification, recertification or substantiated complaint surveys. CMS' authority to impose the user fees on providers is very limited, both in duration and scope. The authority comes from the *Continuing Appropriations Resolution for Fiscal Year (FY) 2007* wherein Congress continued funding for essential government departments and national program priorities through the end of FY 2007. This funding for FY 2007 specifically includes sums "out of applicable corporate or other revenues, receipts, and funds for the several departments, agencies, corporations and other organizational units of Government" that Congress explicitly names in the continuing resolution. One such applicable revenue is the section 20615(b) user fees. However, Congress does not authorize CMS to impose them beyond FY 2007, and a decision to make such user fees a "permanent change to the statute" remains solely within the jurisdiction of Congress, not CMS.



CMS' proposed rule implements section 20615(b) and establishes the user fee amounts to be imposed upon providers for the remainder of FY 2007. In reviewing the proposed rule, we urge CMS to clarify that the fees apply only to *revisit* surveys, modify the method for calculating revisit survey fees and revise the reconsideration process.

### **COLLECTION OF FEES**

The user fees that section 20615(b) permits CMS to impose on providers are expressly limited to fees "necessary to cover the costs incurred . . . for conducting revisit surveys." Moreover, section 20615(b) ensures that all of the section 20615(b) user fees that CMS collects remain immediately available to CMS until they are used by CMS for conducting revisit surveys. **CMS, therefore, must revise section 488.30(d) to ensure that fees will be deposited as an offset collection to be used exclusively for "revisit surveys," rather than for more general "survey and certification activities" as this section now states.**

### **CALCULATION OF REVISIT SURVEY FEES**

We do not understand exactly how CMS calculated a national hourly revisit survey cost from the state-level data, and we urge the agency to provide more detail on these calculations in the final rule.

In the proposed rule, CMS states that the amount of the revisit survey fee may be based on the size of the provider, the number of follow-up visits resulting from uncorrected deficiencies, the seriousness and number of deficiencies and may reflect any regional differences in cost. However, in proposing the revisit fee amounts, CMS fails to take any of these variables into account. We recommend that CMS consider the number of follow-up visits required and the seriousness and number of deficiencies when determining the revisit survey fee amounts. Providers whose deficiencies are minor and do not place patient safety in jeopardy should not be assessed the same fee as providers whose deficiencies show more serious safety and quality concerns and require more work by the survey team.

### **RECONSIDERATION PROCESS**

We have several concerns with the proposed reconsideration process policies. CMS states that providers may request a reconsideration of the revisit user fee if they believe an error of fact, such as a clerical error, has been made. We find this policy too narrow. By allowing providers the opportunity for reconsideration only for administrative errors, CMS assumes that the deficiencies cited in initial surveys are always accurate. However, this is not always the case. There have been instances when surveyors have made mistakes and inappropriately cited a provider for a deficiency that did not exist. Under the current policy, a provider in such a situation would have to undergo a revisit survey; but, assuming the mistake was discovered and the deficiency was not cited again, there would be no further repercussions to the provider. However, under the proposed policy, providers in such a situation would be forced to pay a fee for the erroneous revisit survey. This is unacceptable. **CMS must allow providers the opportunity to request a reconsideration of the revisit user fee if providers believe an error of any kind, including an error made in the initial survey, has occurred.**

Herb Kuhn  
August 24, 2007  
Page 3 of 3

In addition, the proposed deadline for providers to request reconsideration is too short. Under the proposed rule, requests for reconsideration must be received by CMS within seven calendar days from the date identified on the revisit user fee assessment notice. This deadline is unrealistic and leaves open the possibility that providers may not even receive the revisit user fee assessment notice before the reconsideration deadline passes. **We urge CMS to increase the length of time for providers to request a reconsideration to 30 calendar days from the date of the revisit user fee notice.** Further, while CMS proposes a deadline for providers to submit a request for reconsideration, the agency does not specify a deadline for itself to respond to reconsideration requests. We ask that CMS insert into the final rule a deadline by which it will respond to reconsideration requests; we believe a 30-calendar day deadline would be appropriate.

We also are concerned with CMS' description of the provision of refunds when a revisit fee is found to be erroneously charged to a provider, and the provider has already made a payment for the fee. CMS states that when such instances occur, the payment will be held and credited against any future assessments of revisit fees. If no other fees are assessed, CMS will provide a refund following its reconciliation period. **This policy is unacceptable. If a revisit fee payment is found to be erroneous, CMS should refund the payment to the provider immediately.**

If you have any questions about these comments, please feel free to contact me or Nancy Foster, vice president for quality and patient safety, at (202) 626-2337 or [nfoster@aha.org](mailto:nfoster@aha.org).

Sincerely,

Rick Pollack  
Executive Vice President