

November 20, 2007

Kerry Weems  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Room 445-G  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

***RE: CMS-1399-GNC; Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 2008 (Vol. 72, No. 189), October 1, 2007.***

Dear Mr. Weems:

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 this opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) notice on the performance evaluation criteria and standards it will use for its contract fiscal intermediaries (FIs) and carriers.

The proposed criteria and standards should provide the necessary framework for CMS to oversee and evaluate these influential contractors to ensure accurate and fair execution of Medicare statutes, regulations and guidelines. However, the success of these proposed standards ultimately depends on CMS' enforcement. We encourage CMS to proactively and rigorously enforce these performance standards and to respond to problems in a timely and comprehensive manner.

The AHA has long-standing concerns with FI performance related to the medical necessity review function. We fully support the need for CMS to conduct medical necessity reviews to ensure that the Medicare program pays only for clinically appropriate services. However, we urge CMS to exercise stronger oversight to ensure that contractors' medical necessity reviews comply with CMS' own program integrity, coverage and appeals rules. As we have expressed in comment letters on numerous inpatient rehabilitation facility local coverage determinations (LCDs) issued by FIs, we are concerned that FIs are unilaterally narrowing national Medicare coverage criteria and issuing proposals that are neither evidence based nor consistent with



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standard medical practice. These practices violate CMS' national program integrity and coverage guidelines. CMS must actively monitor its contractors to prevent such practices, which ultimately restrict access for patients who meet medical necessity standards.

In 2007, the AHA and United BioSource Corporation collected medical necessity review data from 72 inpatient rehabilitation facilities in 20 states. As part of the study, we examined LCDs issued by nine FIs, including TriSpan, Mutual of Omaha, BlueCross BlueShield of Georgia, Cahaba Government Benefit Administrators, and First Coast Service Options, as well as four of the five FIs that have consolidated under National Government Services, including AdminiStar Federal, Inc., United Government Services, Associated Hospital Services and Anthem Health Plan of New Hampshire. FIs initially denied payment for an alarming 80 percent of inpatient rehabilitation hospital bills reviewed, withholding more than \$25 million in Medicare payments. Sixty-three percent of denied bills were overturned after completing the appeals process, resulting in nearly \$6 million returned to hospitals. The report, "Limiting Access to Inpatient Medical Rehabilitation: A Look at Payment Denials for Medicare Patients Treated in Inpatient Rehabilitation Facilities," is attached for your review.

To discourage inappropriate behavior, CMS should require FIs to meet key performance measures, just like providers. This should result in more thorough and accurate medical necessity reviews that lower the administrative burden on providers. More precise medical necessity review by FIs would cut the administrative red tape required by appeals, which take an average of 18 months to adjudicate and divert hospital resources away from patient care.

CMS and providers expect a higher rate of accuracy and quality from FIs. CMS must use its FI performance review process to ensure that FIs begin to meet these expectations – even if it means penalizing FIs that do not meet CMS performance criteria. These same high performance standards and penalties also should apply to other CMS contractors conducting medical necessity reviews.

It is unclear why these performance criteria took effect on October 1 – two months prior to the completion of the public comment period on November 30. For this and other policies that are circulated for public comment, CMS should release the proposal for review within a time frame that allows the agency to consider and respond to public input *prior to* implementation of the proposal.

Thank you for considering our input on FI performance pertaining to medical necessity reviews. If you have questions or need further information, please contact me or Rochelle Archuleta, senior associate director of policy, at (202) 626-2320 or [rarchuleta@aha.org](mailto:rarchuleta@aha.org).

Sincerely,

Rick Pollack  
Executive Vice President