



American Hospital
Association

Liberty Place, Suite 700
325 Seventh Street, NW
Washington, DC 20004-2802
(202) 638-1100 Phone
www.aha.org

April 9, 2012

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

Dear Ms. Tavenner:

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our 42,000 individual members, the American Hospital Association (AHA) continues to urge the Centers for Medicare & Medicaid Services (CMS) and Congress to seek alternatives to the “25% Rule” for Long-Term Care Hospitals (LTCHs). While we will continue to work with CMS to find long-term solutions, we urge you to take quick administrative action to allow all LTCHs to continue serving Medicare beneficiaries by delaying full implementation of the 25% Rule.

Intervention under your rulemaking authority is needed prior to July 1 because under current law, full implementation of the 25% Rule will start with cost-reporting periods beginning on or after July 1 of this year. Through the passage of *Medicare, Medicaid and SCHIP Extension Act* (MMSEA) in 2007, Congress halted full implementation of the 25% Rule, as well as several other regulatory requirements, to allow time for the establishment of LTCH patient and facility criteria. In the *Patient Protection and Affordable Care Act of 2010*, Congress extended MMSEA relief for LTCHs; this relief included a delay in full implementation of the 25% Rule through June 30, 2012.

In the payroll tax relief extension legislation passed in February, Congress extended several expiring Medicare provisions. However, Congress extended only provisions expiring on or before December 31, 2011. Therefore, there is an urgent need for administrative intervention to stay full implementation of the 25% Rule starting in July.



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Due to the limited number of legislative days this year, it is unlikely that Congress will have the opportunity to resolve Medicare and other budget issues before the fall election. Since Congress needs additional time to further consider alternatives to the 25% Rule, such as LTCH criteria, **we urge you to exercise your discretionary rulemaking authority to extend the current relief from the 25% Rule until the end of 2012 to give Congress an opportunity to resolve many of the issues affecting LTCHs.**

An extension will help maintain the regulatory stability needed for LTCHs to continue treating Medicare's sickest beneficiaries who need long hospital stays – the special focus of LTCHs. Without your action, in July affected LTCHs will have to begin factoring in full implementation of the 25% Rule for admissions decisions. This will lead to Medicare patients, who need appropriate care based on their medical conditions, being turned away from LTCHs.

Given the time sensitivity and inequity of the quickly approaching 25% Rule change, we urge you to extend the delay in full implementation at least through December 31, 2012. In addition, should CMS and Congress be unable to address issues affecting LTCHs by the end of this year, we ask that you support the extension of LTCH provisions included in MMSEA for an additional year. This will allow the LTCH field to continue to operate under a stable regulatory environment while the AHA, in collaboration with other LTCH stakeholders, CMS and Congress continue to work to resolve issues surrounding LTCH payments.

As we have discussed with CMS staff on multiple occasions, we are committed to working with CMS to address these issues and to develop a long term policy to ensure the appropriate use and payment of LTCHs. If you have any questions, please contact me or Rochelle Archuleta, AHA senior associate director of policy, at (202) 626- 2320 or rarchuleta@aha.org.

Sincerely,

/s/

Rick Pollack
Executive Vice President