American Hospital Association

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Submitted Electronically

May 17, 2012

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS's Preliminary Decisions on the Recommendations of the Hospital Outpatient Payment Panel on Supervision Levels for Select Services.

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) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) preliminary decisions on the recommendations of the Hospital Outpatient Payment (HOP) Panel on supervision levels for select services.

The AHA supports CMS's decision to accept the Panel's recommendations to change the current supervision requirements for 27 Healthcare Common Procedure Coding System (HCPCS) codes from direct to general supervision. We agree with the HOP Panel that these services, which include mostly psychotherapy services as well as several services related to bladder catheterization, immunization and smoking cessation, can be appropriately and safely conducted under general supervision in accordance with applicable Medicare regulations and policies. In particular, we believe that this decision will support access to hospital-based outpatient mental health services, especially in rural communities where the number of hospitals offering these services has been rapidly declining but demand remains high. According to a recent AHA and National Association of Psychiatric Health Systems study, between 2003 and 2010, the number of hospital-based partial hospitalization program (PHP) providers declined by 23 percent, and the number of such providers in rural communities fell 65 percent. While declining reimbursement is the primary cause of this contraction, the additional and unnecessary costs associated with recruiting physicians (or other specified non-physician mental health practitioners) to meet CMS's requirements for direct supervision no doubt also were influential.

Permitting general supervision will help preserve patient access to outpatient mental health services in critical access hospitals (CAHs) and small rural prospective payment system (PPS) hospitals, where psychiatrists, clinical psychologists and licensed clinical social workers are in short supply.

The AHA is concerned about CMS's decision to reject the Panel's recommendation to add HCPCS code 94640 (Pressurized or non-pressurized inhalation treatment for acute airway obstruction or for sputum induction for diagnostic) to the list as a non-surgical extended duration therapeutic service. CMS's decision was not based on the merit of whether the service belonged in this supervision category, but rather because "[i]n the final rule we had indicated that the Panel may recommend only general, direct or personal supervision," as stated in the agency's online posting of its preliminary decision.

While we agree that the preamble to the 2012 outpatient PPS system regulation describes limits to the Panel's scope, as CMS states, the Amended Charter of the Panel does not include any such limitations to the level of supervision that may be recommended by panelists. Instead, the charter states:

> "The Panel may advise the Secretary, Department of Health and Human Services (HHS), and the Administrator, Centers for Medicare & Medicaid Services (CMS), on the following:...2) *the appropriate supervision level for hospital outpatient services. With respect to supervision, the Panel may recommend a supervision level to ensure an appropriate level of quality and safety for delivery of a given service, as described by Healthcare Common Procedure Coding System (HCPCS) codes.*" [Emphasis added]
>
> "The Panel is technical in nature, and it may advise on the following issues: …*Evaluating the required level of supervision for hospital outpatient services.*" [Emphasis added]

Given that adding services to the "hybrid" supervision level CMS has established for non-surgical extended duration therapeutic services may help "to ensure an appropriate level of quality and safety for delivery of some services" and that the charter for the HOP Panel does not prohibit the Panel from making such a recommendation, the AHA further requests that CMS permit the HOP Panel to recommend such assignments.

The AHA appreciates the speed at which CMS expanded the HOP panel and set its winter meeting to discuss the first set of recommendations of supervision level changes. While we understand the timeframes were challenging for this first meeting, hospitals were given little time to propose codes for revision and the HOP panel members were given very limited time to review submissions prior to the meeting. This is particularly problematic for non-clinical members of the panel that get clinical feedback from their medical staff members and nursing staff prior to the meeting. We urge CMS to provide more time for hospitals to respond to requests for code changes and for HOP panel members to review submitted information prior to a meeting.

Thank you again for the opportunity to comment. If you have any questions, please contact me or Roslyne Schulman, director for policy development, at (202) 626-2273 or rschulman@aha.org.

Sincerely,

/s/

Linda E. Fishman
Senior Vice President, Public Policy Analysis and Development