



**American Hospital
Association**

Legislative Advisory

AHA's Legislative Advisory, a service to members, is produced whenever there is a significant development that affects the job you do in your community.

Details on 75% Rule in Omnibus Spending Package

December 8, 2004

A Message to AHA Members:

On November 20, Congress passed a fiscal year 2005 omnibus spending bill that addresses several AHA advocacy issues – including the 75% Rule – due in large part to your critical grassroots efforts.

The omnibus bill's 75% Rule provision prohibits the Secretary of the Department of Health and Human Services (HHS) from reclassifying any inpatient rehabilitation facility (IRF) as an inpatient acute care hospital, until the Secretary responds to a pending Government Accountability Office (GAO) report.

Background

The 75% Rule, implemented in 1983, is one of the key eligibility criteria for IRFs. In 2002, the Centers for Medicare & Medicaid Services (CMS) discovered that fiscal intermediaries were inconsistent in implementing the rule, and placed a moratorium on its enforcement, which was in effect through June 30, 2004. During this moratorium, the AHA and other provider groups asked CMS to study and modernize the rule to reflect current medical practices and technology. Through the extensive grassroots efforts of hospital leaders, Congress urged CMS to move slowly and carefully in implementing the rule.

Subsequently, CMS issued a final rule in May 2004 that included highly restrictive changes to the conditions that qualify under the 75% Rule. This final rule, which took effect July 1, 2004, also included a four-year phase-in that set a 50% threshold during the first year of implementation – a level that is still difficult for a large number of facilities to meet due to the new restrictive criteria.

Omnibus Provision

The omnibus spending bill gives the Secretary up to 60 days after GAO issues the report to determine that the 75% Rule, as established in the May 2004 final rule, is consistent with the GAO findings *or* issue an interim final rule that revises the 75% Rule and makes it consistent with the GAO report. This report may be sent to Congress early in 2005.

The omnibus bill's 75% Rule provision (language attached) temporarily prevents CMS from changing the status of an IRF that cannot comply with the 75% Rule to that of a general inpatient acute care hospital. This provision reflects Congress' concern that the 75% Rule may cause beneficiaries to lose access to inpatient rehabilitation services. The AHA will work with CMS

and encourage the agency to “restart the clock” used for the four-year phase-in of the 75% Rule after the 60-day period is completed, and establish a new start date for whichever threshold CMS establishes following the Secretary’s review of the GAO study.

In the meantime, we continue to recommend that IRFs maintain efforts to comply with the current 50% threshold, and will work with the GAO and CMS to address other implementation concerns. We’ll keep you posted as these efforts unfold.

For more information, contact Jennifer Mallard, senior associate director of federal relations, at (202) 626-2981 or jmallard@aha.org.

Attachment

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Omnibus Bill's 75% Rule Language. The omnibus bill includes the following 75% Rule language:

“(a)...none of the funds appropriated by this Act may be expended by the Secretary of Health and Human Services to treat a hospital or unit of a hospital that was certified by the Secretary as an inpatient rehabilitation facility on or before June 30, 2004, as a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 395ww(d)(1)(B))) until, not later than 60 days after the date on which the report under subsection (b) is issued, the Secretary, taking into account the recommendations in such report:

(1) determines that the classification criteria of hospitals and units of hospitals as inpatient rehabilitation facilities under such section 412.23(b)(2) are not inconsistent with such recommendations; or

(2) promulgates a regulation providing for revised criteria under such section 412.23(b)(2), which regulation shall be effective and final immediately on an interim basis as of the date of publication of the regulation.

(b) The study referred to in subsection (a) is a study by the Comptroller General of the United States directed in the statement of managers accompanying the conference report on the bill H.R. 1 of the 108th Congress regarding clinically appropriate standards for defining inpatient rehabilitation services under such section 412.23(b)(2).

For more information, contact:

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