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August 22, 2013

Marilyn B. Tavenner
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Tavenner:

I am writing today to request that CMS instruct all contractors that there will be a delay in enforcement of provisions in the final rule, *Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care; Hospital Prospective Payment System and Fiscal Year 2014 Rates*, 78 Fed. Reg. 50496 (August 19, 2013) related to the revised inpatient admission criteria. There should be no enforcement before CMS issues guidance on the many outstanding issues that need clarification, and providers have sufficient time to educate physicians and others about the new requirements and to make changes to electronic health systems that are needed to support the rules.

Teaching Hospitals Need Assurance that As of October 1 Admissions by Residents Who Are Under the Supervision of an Attending Physician Will Not Be Denied

The AAMC is very concerned that as promulgated, the final rule does not allow residents in training programs to admit patients. In the preamble to the final regulation, CMS responded to comments about the need to allow residents working under the supervision of an attending physician and others to admit patients, by stating that:

We are replacing this language [which would have restricted admissions to those ordered by a practitioner responsible for the inpatient hospital care of the beneficiary] with new language to specify that, although the ordering practitioner need not be responsible for the patient's inpatient care, he or she must be knowledgeable about the patient's hospital course, medical plan of care, and current condition. (p. 50942)

However, the language actually adopted requires that the order must be written by a practitioner "who has admitting privileges at the hospital," something that few residents have as they are not considered to be members of the hospital's medical staff. As CMS wrote:

[t]he final language reads, "(b) The order must be furnished by a qualified and licensed practitioner who has admitting privileges at the hospital as permitted by State law, and who is knowledgeable about the patient's hospital course, medical plan of care, and current condition. The practitioner may not delegate the decision (order) to another individual who is not authorized by the State to admit patients, or has not been granted admitting privileges applicable to that patient by the hospital's medical staff. (emphasis added; p. 50942)

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During the Open Door Forum call CMS acknowledged that it was not the Agency's intent to prohibit residents from admitting patients and that it would be issuing a Q&A. Until this issue can be resolved to the satisfaction of the teaching hospital community, the AAMC requests that CMS make clear to all contractors that no inpatient admission should be denied because it was ordered by a resident while under the supervision of an attending physician. The AAMC would be pleased to have an opportunity to assist CMS in the development of the Q&A to ensure that it adequately addresses this issue.

Given the Need for Much Additional Guidance Regarding the New Rules for Inpatient Admissions, and the Time Required to Educate Physicians and Others Once Such Guidance is Issued, CMS Should Delay Enforcement of the Requirements for at Least 6 Months Following the Release of the Guidance

Following the August 15 Open Door Forum (ODF), CMS is well-aware that much additional guidance is needed prior to the implementation of the new rules. As short inpatient stays have been a focus of audits by RACs, hospitals feel especially at risk for failure to properly implement CMS requirements. Examples of the many questions yet to be resolved, all of which were posed during the August 15 ODF include:

- What will occur if a patient meets the criteria in the regulation and CMS guidance but when an auditor refers to Interqual, for example, it says the patient should be admitted for less time?
- The factors that are to be taken into account when a physician certifies that it is his/her expectation that the patient will be an inpatient for 2 midnights, including how to satisfy the requirements in the medical record.
- What if a patient spends one night as an inpatient at Hospital X and then is transferred to Hospital Y for further inpatient care and is released after a second midnight?

Once the guidance is available, hospitals must be given sufficient time to understand the rules, educate physicians and others, and ensure that they have put in place the mechanisms that are needed to comply with the new requirements. While the rule will be effective October 1, 2013, the AAMC urges CMS to notify all contractors that enforcement will be delayed for at least 6 months following the issuance of guidance. Such a delay would not be unusual. For example, the Agency delayed enforcement of the ordering and referring and documentation requirements because of problems encountered with PECOS.

The AAMC would welcome the opportunity to work with CMS on these issues. Please contact Ivy Baer at ibaer@aamc.org, 202-828-0499.

Sincerely,



Joanne M. Conroy, M.D.
Chief Health Care Officer

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Ivy Baer