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Glenn M. Hackbarth, J.D., Chairman
Robert D. Reischauer, Ph.D., Vice Chairman
Mark E. Miller, Ph.D., Executive Director

June 27, 2007

Leslie V. Norwalk, Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington DC 20201

Re: File code CMS-1545-P

Dear Ms. Norwalk:

The Medicare Payment Advisory Commission (MedPAC) welcomes the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule entitled *Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2008*, Federal Register, Vol. 72, No. 86, p. 25526 (May 4, 2007). We appreciate your staff's ongoing efforts to administer and improve the payment system for skilled nursing facilities, particularly given the agency's competing demands.

The proposed rule updates the rates by 3.3 percent (the market basket), in accordance with current law. In March 2007, MedPAC recommended to the Congress that the industry receive no update given that the aggregate Medicare margin in 2005 was 12.9 percent and the estimated margin for 2007 was 11 percent. We concluded that SNF payments would be more than adequate to accommodate cost growth without an update.

The proposed rule revises and rebases the SNF market basket to reflect more recent cost information. Since current payments reflect SNFs' cost structures in 1997, updating the market basket will help make payments more accurate. The revisions include a methodology to estimate Medicare-allowable costs (instead of reflecting the costs of the entire facility), which will make the SNF market basket consistent with those used in other PPSs.

We have two concerns with the proposed rule: the triggering of a forecast error correction and the lack of further refinements to the PPS despite acknowledged shortcomings in the SNF PPS.

First, the Commission believes that the market basket and projection should be as accurate as possible. We agree with CMS that corrections should fix major errors and appreciate the proposal to increase the threshold to screen out small adjustments that are likely to occur with any projection and would

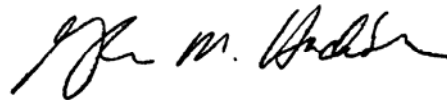
probably smooth out over time. That said, we do not support the triggering of an automatic correction. The Commission bases its recommended updates to payment rates on multiple factors, including the financial health of the industry. Automatic adjustments are a particular concern when coupled with automatic market basket increases—and the current circumstances of the SNF industry provide a good example of the problem. An automatic payment update coupled with an automatic forecast correction would result in making a payment increase on top of legislated increases to the payment rates, even when the industry has sizable Medicare margins.

Our second concern centers on what the proposed rule does not address. MedPAC is disappointed that the proposed rule does not correct major shortcomings in the design of the SNF PPS. Two years ago we commented that the proposed refinements now in place were inadequate because they (a) did not directly target payment for nontherapy ancillary services (NTAs), and (b) continued to base a large portion of the daily payment on the amount of therapy provided or expected to be provided. CMS-sponsored research has identified three areas of potential refinements: developing an NTA component, moving away from a service-based therapy component, and adding an outlier policy. Such refinements could improve the accuracy of payments and reduce incentives to furnish services of marginal value, and would not require the collection of new information. In the agency's report to the Congress, CMS noted that it would continue to investigate alternatives to the RUG system. We urge CMS to complete its review so that necessary improvements to the PPS can be made.

Over the coming year, MedPAC will develop and evaluate alternative designs for the SNF PPS. We plan to use the work conducted by the Urban Institute for CMS as a starting point in our examination of design options. We will keep CMS abreast of this work and welcome the agency's input.

If you have any questions or require clarification of our comments, please feel free to contact Mark Miller, MedPAC's Executive Director.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn M. Hackbarth". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Glenn M. Hackbarth
Chairman