MEDPAC Medicare Payment Advisory Commission

601 New Jersey Avenue, N.W. • Suite 9000
Washington, DC 20001
202-220-3700 • Fax: 202-220-3759
www.medpac.gov

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

November 3, 2003

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

Re: File code CMS-1262-P

Dear Mr. Scully:

The Medicare Payment Advisory Commission (MedPAC) welcomes the opportunity to comment further on the criteria defining inpatient rehabilitation facilities (IRFs) for purposes of Medicare payment. Specifically, this letter responds to the proposed rule entitled Medicare Program: Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility: Proposed Rule, 68 Fed. Reg. 53266 (September 9, 2003). We appreciate your staff's work on these complex policy and payment issues, particularly considering the competing demands on the agency.

Post-acute care is complicated and a patient can often be treated in various settings. This creates a need for the Medicare program to differentiate facilities for payment purposes and this is the purpose of the so-called "75 percent rule." The challenge is defining a class of patients who uniquely benefit from the intensive—and expensive—treatment provided by IRFs. Already a difficult challenge, that becomes even more difficult when it may mean denying payment in the future for patients that IRFs have become accustomed to treating during the period when the 75 percent rule was not enforced.

We believe that CMS has taken a positive step with this rule by lowering the percentage required to 65 percent temporarily and requesting evidence from providers of the efficacy of intensive inpatient rehabilitation. However, CMS's polyarthritis definitions included in the proposed rule are viewed by some clinicians as overly restrictive. We believe that CMS has consulted with experts in formulating these definitions, but the proposed rule does not adequately explain the rationale. CMS, at a minimum, should concisely and completely lay

out its rationale for the definitions. We also urge CMS to engage in additional consultation and recommend that the agency convene a panel of clinicians and publically report the results. In order to provide a variety of perspectives, we recommend that CMS include clinicians with no financial interest in IRFs and clinicians involved with alternative post-acute settings (e.g., skilled nursing facilities), in addition to IRF clinicians. Depending on the outcome, CMS may need to relax its polyarthritis definitions.

As a routine matter of administering the program, CMS should regularly revisit the conditions included in the 75 percent rule by consulting with outside clinical experts in addition to CMS's in-house clinical experts.

We look forward to offering any assistance we can to CMS.

Sincerely,

Glenn M. Hackbarth, J.D.
Chair

SK/aj