December 19, 2002

The Honorable Richard B. Cheney
President of the Senate
U. S. Capitol
Washington, DC 20515

Dear Mr. Vice President:

The Medicare Benefits Improvement and Protection Act of 2000 (BIPA) requires that Medicare+Choice plans provide coverage of post-hospital extended care services through a skilled nursing facility chosen by the plan's member if certain conditions are met. The law required that the Medicare Payment Advisory Commission conduct a study analyzing the effects of the provision on Medicare+Choice organizations. We have completed the study and are submitting our findings on the BIPA provision.

In general, most Medicare+Choice plans require that members receive care from providers in the plan's network. However, plan members who reside in nursing facilities or continuing care retirement communities (CCRCs) may require post-hospital care and prefer placement in their nursing facility of residence or in a skilled nursing facility (SNF) on the campus of the retirement community, even if that facility is not in the plan's network. The BIPA provision addressed this issue.

Centers for Medicare and Medicaid Services (CMS) data do not identify Medicare+Choice members who use CCRC or SNF services. We therefore interviewed administrative staff at eleven CCRCs in nine states and surveyed managers and medical staff at four national managed care corporations. We also interviewed representatives of long-term care and managed care associations.

Disagreements between managed care organizations and members with regard to post-hospital SNF placement have arisen in several states. Such controversies led New York, California, and other states to enact laws in the late 1990s addressing choice of nursing facility (Exhibit 1). Laws such as the one in New York require that the member's physician refer a CCRC resident to the community's nursing facility. They require that nursing facilities accept plan payment rates. Statutes such as that in California require that plans reimburse facilities preferred by members of CCRCs. In BIPA, the Congress established similar rights for members of Medicare+Choice

plans in all states (Exhibit 2). Beneficiaries are assured of choice of SNF upon discharge if they resided in a SNF before admission, if it provides Medicare SNF services through the CCRC in which they lived before hospitalization, or if the beneficiary's spouse lives in such a facility at the time of discharge. Plans must pay these nursing facilities at rates consistent with their payment for SNFs with which they have contracts.

This issue has diminished in importance in the past few years. CCRC staff report that problems of return to SNF now occur relatively rarely although they may have arisen more frequently in the past. Most reported no recent events at their own facilities. Managed care plan staff indicated that they have rarely encountered problems associated with placement of members in retirement community nursing facilities. They note advantages in placing beneficiaries in nursing facilities with which they are familiar but are concerned with potential quality problems in monitoring and coordinating care among non-network providers.

The BIPA provision has not had a major impact on Medicare+Choice organizations. It has not placed major administrative or cost burdens on managed care organizations. Staff at major managed care corporations report that they often contract for out-of-network care for skilled nursing services for Medicare beneficiaries, and thus there were no reports of major administrative burdens attributable to the impact of BIPA.

Although plans sometimes must pay rates that exceed their standard contract rates in these cases, they do not attribute any significant cost impact to BIPA. Similarly, they do not report any impact on contracting.

Because there are no major administrative or cost burdens from the provision, there have been no major effects on the scope of additional benefits provided. The nursing facility return issue is of modest proportions and has declined in importance in recent years. The enactment of state laws in the late 1990s may have helped ameliorate problems. Neither retirement communities nor health plans report patient care, administrative, or cost impact of BIPA. The law affords additional protections to beneficiaries. It may have benefited some communities in their dealings with plans and does not appear to have negatively affected either plans or retirement communities.

Please do not hesitate to call if you have any questions about the report or ongoing work by the Commission.

Sincerely,

Glenn M. Hackbarth, J.D.
Chairman

cc: list
enclosures

Identical letter sent to the Honorable J. Dennis Hastert

cc: Honorable Max Baucus, Chairman, Senate Committee on Finance
Honorable Charles E. Grassley, Ranking Member

Honorable William M. Thomas, Chairman, House Committee on Ways and Means
Honorable Charles B. Rangel, Ranking Member

Honorable Nancy L. Johnson, Chairman, Subcommittee on Health, House Committee on Ways and Means
Honorable Pete Stark, Ranking Member

Honorable W.J. "Billy" Tauzin, Chairman, House Committee on Energy and Commerce
Honorable John D. Dingell, Ranking Member

Honorable Michael Bilirakis, Chairman, Subcommittee on Health, House Committee on Energy and Commerce
Honorable Sherrod Brown, Ranking Member

Honorable Tommy G. Thompson, Secretary, U.S. Department of Health and Human Services
Honorable Thomas A. Scully, Administrator, Centers for Medicare and Medicaid Services

Selected state laws on choice of skilled nursing facility

New York

If an enrollee requires nursing facility placement and is a resident of a continuing care retirement community authorized under article forty-six of this chapter, the enrollee's primary care practitioner must refer the enrollee to that community's nursing facility if medically appropriate; if the facility agrees to be reimbursed at the health maintenance organization's contract rate negotiated with similar providers for similar services and supplies, or negotiates a mutually agreed upon rate; and if the facility meets the health maintenance organization's guidelines and standards for the delivery of medical services.

California (excerpt)

Return of person with Medicare benefits to skilled nursing facility after hospitalization
(a) An enrollee with coverage for Medicare benefits who is discharged from an acute care hospital shall be allowed to return to a skilled nursing facility in which the enrollee resided prior to hospitalization, or the skilled nursing unit of a continuing care retirement community or multilevel facility in which the enrollee is a resident for continuing treatment related to the acute care hospital stay.

(4)(A) The skilled nursing facility, multilevel facility, or continuing care retirement community agrees to accept reimbursement from the health care service plan for covered services at either of the following rates: (i) The rate applicable to similar skilled nursing coverage for facilities participating in the plan. (ii) ...at a rate negotiated in good faith by the health care service plan or designated agent on an individual, per enrollee, contractual basis....
(b) The health care service plan, or designated agent, shall be required to reimburse the skilled nursing facility, continuing care retirement facility, or multilevel facility at the rate agreed to in paragraph (4) of subdivision (a).

BIPA on choice of skilled nursing facility services under Medicare+Choice

(l) RETURN TO HOME SKILLED NURSING FACILITIES FOR COVERED POST-HOSPITAL EXTENDED CARE SERVICES.--

(1) ENSURING RETURN TO HOME SNF.--

(A) IN GENERAL.--In providing coverage of post-hospital extended care services, a Medicare+Choice plan shall provide for such coverage through a home skilled nursing facility if the following conditions are met:

(i) ENROLLEE ELECTION.--The enrollee elects to receive such coverage through such facility.

(ii) SNF AGREEMENT.--The facility has a contract with the Medicare+Choice organization for the provision of such services, or the facility agrees to accept substantially similar payment under the same terms and conditions that apply to similarly situated skilled nursing facilities that are under contract with the Medicare+Choice organization for the provision of such services and through which the enrollee would otherwise receive such services.

(B) MANNER OF PAYMENT TO HOME SNF.--The organization shall provide payment to the home skilled nursing facility consistent with the contract or the agreement described in subparagraph (A)(ii), as the case may be.

(2) NO LESS FAVORABLE COVERAGE.--The coverage provided under paragraph (1) (including scope of services, cost-sharing, and other criteria of coverage) shall be no less favorable to the enrollee than the coverage that would be provided to the enrollee with respect to a skilled nursing facility the post-hospital extended care services of which are otherwise covered under the Medicare+Choice plan.

(3) RULE OF CONSTRUCTION.--Nothing in this subsection shall be construed to do the following:

(A) To require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under part A for medicare beneficiaries not enrolled in a Medicare+Choice plan.

(B) To prevent a skilled nursing facility from refusing to accept, or imposing conditions upon the acceptance of, an enrollee for the receipt of post-hospital extended care services.

(4) DEFINITIONS.--In this subsection:

(A) HOME SKILLED NURSING FACILITY.--The term `home skilled nursing facility' means, with respect to an enrollee who is entitled to receive post-hospital extended care services under a Medicare+Choice plan, any of the following skilled nursing facilities:

(i) SNF RESIDENCE AT TIME OF ADMISSION.--The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of such post-hospital extended care services.

(ii) SNF IN CONTINUING CARE RETIREMENT COMMUNITY.--A skilled nursing facility that is providing such services through a continuing care retirement community (as defined in subparagraph (B)) which provided residence to the enrollee at the time of such admission.

(iii) SNF RESIDENCE OF SPOUSE AT TIME OF DISCHARGE.--The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from such hospital.

(B) CONTINUING CARE RETIREMENT COMMUNITY.--The term `continuing care retirement community' means, with respect to an enrollee in a Medicare+Choice plan, an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or

for a specified period.

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act.

(c) MEDPAC STUDY.--

(1) STUDY.--The Medicare Payment Advisory Commission shall conduct a study analyzing the effects of the amendment made by subsection (a) on Medicare+Choice organizations. In conducting such study, the Commission shall examine the effects (if any) such amendment has had--

(A) on the scope of additional benefits provided under the Medicare+Choice program;

(B) on the administrative and other costs incurred by Medicare+Choice organizations; and

(C) on the contractual relationships between such organizations and skilled nursing facilities.

(2) REPORT.--Not later than 2 years after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under paragraph (1).