

September 2, 2008

Kerry N. Weems  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Attention: CMS-1404-P  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W., Room 445-G  
Washington, DC 20201

**RE: CMS-1404-P, Medicare Program: Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates (Vol. 73, No. 139), July 18, 2008.**

Dear Mr. Weems:

Please accept these comments from the Connecticut Hospital Association (CHA), on behalf of its twenty-nine not-for-profit acute care hospital members, regarding the Centers for Medicare and Medicaid Services (CMS) proposed rule: Medicare Program: Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates (Vol. 73, No. 139). These comments explain the significant harmful effect on Connecticut hospitals of a number of the proposals regarding partial hospitalization.

#### **Outpatient PPS: Partial Hospitalization**

In the past, CMS has expressed concern that the median per diem cost derived from hospital and community mental health center (CMHC) claims data was too low to cover the cost of partial hospitalization programs (PHPs) that typically should span four to six hours per day. Despite those concerns, CMS implemented a 15 percent decrease in the per diem for 2006, another 5 percent decrease in 2007 and a 13 percent reduction in 2008, which resulted in a PHP per diem rate of \$203.

#### **Proposed Payment Policy for 2009**

In the 2008 and 2009 proposed rules, CMS considered the number of services being provided in a day of care as a possible explanation for the continued decline in the calculated per diem cost for PHP. CMS' expectation is that five or six services should be provided in a day. Updated claims data show that CMHC PHPs in 2007 had more low-intensity days – days in which three or fewer units of service were provided – than in the previous year. By contrast, hospital-based PHPs in 2007 reported fewer low-intensity days compared to 2006. Specifically, 28 percent of hospital-based PHP days contained three or fewer units of service and 73 percent CMHC PHP days contained three or fewer units of service. CMS indicates that it never intended PHP days with three services to represent the number of services that ought to be provided on a typical day. CMS expects that days with only three services would be provided in limited circumstances, such as when a patient is transitioning toward discharge.

For 2009, CMS proposes to create two separate APCs for PHPs – APC 0172 Level 1 Partial Hospitalization (three services) and APC 0173 Level 2 Partial Hospitalization (four or more services). While we support creating two separate APCs, we do not support another rate reduction. The proposed payment rates CMS calculates from combined CMHC and hospital-based PHP median cost data – \$140 for APC 0172 and \$174 for APC 0173 – represents another significant reduction in payments for PHP services, even for the new high-intensity APC that will be paid 14 percent less than the PHP rate in 2008. Yet another steep payment reduction for PHP services is untenable, particularly on top of the 33 percent reduction CMS has made since 2006. We predict that this will cause many hospitals to reconsider whether they can afford to continue providing these services and will force many PHPs out altogether, with a serious negative impact on patient access to PHP services.

In order to ensure continued beneficiary access to the more intensive level of PHP services typically provided in hospitals, we recommend that CMS use only hospital-based PHP data to determine the rates at which PHP services will be paid in hospital-based settings and assure hospitals a rate increase over the rates that are currently in effect.

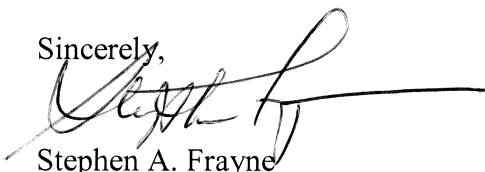
### **Other PHP Proposals for 2009**

Proposal to Deny Payment for Low-intensity Days. CMS proposes to deny payment for any PHP claim for days when fewer than three therapeutic services are provided. CMS states that three services should be the minimum number of services allowed in a PHP day, and days with one or two services do not meet the statutory intent of a PHP program. However, there may be legitimate circumstances that could justify the provision of only one or two units of PHP services in a day. Two examples are if the patient suddenly becomes ill, or if a personal or family emergency requires that they cut their day short. In these very rare circumstances, we believe that CMS should pay, at a reduced level, for the services provided to the patient as long as there is a reasonable rationale provided in the patient’s medical record. Therefore, we recommend that CMS create a modifier that could be used in such rare circumstances and that would trigger a “suspension of claims for medical review” and payment at a reduced rate.

Proposal to Strengthen PHP Patient Eligibility Criteria. CMS proposes putting into regulation its existing policy regarding PHP patient eligibility. These are requirements currently included in the *Medicare Benefit Policy Manual*, Publication 100-92, Chapter 6, section 70.3, and includes the requirement that, “Partial hospitalization programs are intended for patients who—(1) Require 20 hours per week of therapeutic services.” We request that CMS modify this proposal to permit patients transitioning in or out of partial hospitalization programs to receive less than 20 hours per week of therapeutic services as clinical circumstances warrant.

We appreciate the opportunity to offer comments and thank you for your consideration.

Sincerely,



Stephen A. Frayne  
Senior Vice President, Health Policy

SAF: kas

By electronic submission