May 2, 2013

Marilyn Tavenner  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1455-P  
P.O. Box 8013  
Baltimore, MD 21244-1850

Dear Administrator Tavenner:

I am writing on behalf of the National Association of Professional Geriatric Care Managers (NAPGCM). With over 2,000 members, the NAPGCM is dedicated to the advancement of professional geriatric care management through education, collaboration, and leadership. A Geriatric Care Manager is a health and human services specialist who helps families who are caring for older relatives.

In the proposed rules published on March 18th, CMS notes “ongoing concern about recent increases in the length of time that Medicare beneficiaries spend as hospital outpatients receiving observation services.” Under the rule, however, CMS allows hospitals to rebill Part B when Part A is denied. CMS limits hospitals’ rebilling option, requiring that the Part B claim be filed within 12 months of the date of hospital service. The proposed rules also allow hospitals that originally filed a Part A inpatient claim, using a “self-audit” procedure and also within the one-year period, to withdraw the Part A claim and rebill Medicare for medically necessary inpatient claims under Part B. Unfortunately, this approach does not help beneficiaries in outpatient observation status.

Further, CMS issued a Ruling, CMS-1455-R, effective March 18, authorizing hospitals to bill Part B after a Part A claim is denied, even when the hospital services were provided more than one year earlier. CMS is "adopting," but not endorsing, the decisions of ALJs and the Medicare Appeals Council that allow these otherwise late payments. CMS reports that thousands of pending appeals are subject to this Ruling. Noting that hospitals cannot change a patient’s status after the patient is discharged from the hospital, CMS reports that under the Ruling, “The beneficiary is considered an outpatient for services billed on the Part B outpatient claim, and is considered an inpatient for services billed on the Part B inpatient claim.”

The proposed rules continue uncertainty for Medicare hospital patients about their status. A patient may be classified as a hospital inpatient and go to a SNF for rehabilitation, all payable under Part A. Then, up to one year from the date of service in the hospital a Medicare contractor may reject the Part A claim or the hospital, using self-audit, may decide to withdraw its Part A claim for reimbursement and submit a Part B inpatient claim instead. At that point, the proposed rules say, the patient receives a refund of the Part A inpatient deductible and must pay the Part B co-payments and medication.
charges. CMS acknowledges in its rule, “some beneficiaries who are entitled to coverage under both Part A and Part B may have a greater financial liability for hospital services compared to current policy, as they would be liable for additional Part B services billed when the inpatient admission is determined not reasonable and necessary.” CMS does not discuss what happens to the Part A-covered SNF claim when the hospital withdraws the qualifying three-day inpatient stay.

Rather than resolving the situation, the rule further exacerbates the uncertainty faced by Medicare beneficiaries when placed in hospital observation status. The proposed approach continues to impose a financial burden on Medicare beneficiaries. Often, beneficiaries are unaware of the costs and barriers imposed by a classification as “observation status” at hospital admission. The NAPGCM opposes this approach. Instead, we support changes to observation status that are embodied in the bipartisan legislation pending in Congress, the Improving Access to Medicare Coverage Act of 2013. This bill counts all time in the hospital toward meeting the three-day qualifying hospital stay. We believe this approach is appropriately beneficiary focused.

We look forward to working with you to resolve this issue. If you should have questions or comments, please contact Susan Emmer at 301.320.3873.

Sincerely,

[Signature]

President
National Association of Professional Geriatric Care Managers