

NATIONAL ASSOCIATION OF URBAN HOSPITALS

Private Safety-Net Hospitals Caring for Needy Communities

June 9, 2006

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-1488-P
P.O. Box 8011
Baltimore, Maryland 21244-1850

Subject: CMS-1488-P
Issue Identifier: Operating Payment Rates

To Whom it May Concern:

I am writing on behalf of the National Association of Urban Hospitals to express our opposition to the increase in the outlier threshold that the Centers for Medicare & Medicaid Services (CMS) has proposed for the Medicare inpatient PPS system for fiscal year 2007. We believe this increase will result in Medicare failing to pay out its statutorily required proportion of PPS funds as outlier payments for fiscal year 2007 and will cause serious harm to hospitals that incur significant costs from legitimate outlier cases.

Medicare Outliers: The Situation Today

Medicare recognizes that some hospital admissions fall so far outside the norms captured by its prospective payment system (PPS) that they must be paid in an entirely different manner. Consequently, it employs a system of what it calls outliers. Under this system, hospital cases involving selected medical services that exceed a specific Medicare cost threshold are reimbursed by Medicare on a cost basis, through additional payments above and beyond the Medicare PPS payment. These cases are known as outliers. While outlier reimbursement is said to be on a cost basis, outlier payments do not actually reimburse providers for the full cost of the care they provide in cases designated as outliers.

In the current fiscal year, the threshold for a qualified case to become a Medicare outlier is \$23,600.

Medicare Outliers: The Proposed Change in Regulations

In the proposed fiscal year 2007 Medicare inpatient PPS regulation, CMS calls for raising the outlier threshold for the coming year from the current \$23,600 to \$25,530.

Medicare Outliers: NAUH's Objections to the Proposed Policy Changes

NAUH believes that the proposed outlier threshold is too high and will result in Medicare failing to meet its statutory requirement of paying out between five and six percent of its PPS payments as outliers. In 2004, with the outlier threshold at \$31,000, outlier payments amounted to only 3.5 percent of PPS payments – well short of the statutory requirement. This year, with the threshold at \$23,600, outlier payments are on a pace to constitute only about 4.71 percent of PPS payments – again, well short of the statutory requirement. It stands to reason, we believe, that if Medicare cannot fulfill its statutory minimum of five percent with a threshold of \$23,600 this year, it is likely to fall even further from its statutory minimum, not draw closer to it, if that threshold is raised to \$25,530 – even allowing for a generous increase in the overall cost of health care services. NAUH believes the outlier threshold should be decreased below the current \$23,600, not increased.

Medicare's failure to pay an appropriate level of outliers has serious implications for hospitals. Even when it does pay out to an appropriate level, outlier payments themselves do not adequately compensate hospitals for the extraordinary costs they incur providing care to patients with extraordinary medical problems; they only help cushion the blow of such costs. Compounding this problem is that in today's environment, hospital margins are shrinking like never before, with more and more hospitals suffering negative margins. In some situations, just a few outlier cases can mean the difference between a hospital breaking even or losing money. This is especially true for large, private, non-profit urban safety-net hospitals such as those represented by NAUH because they care for higher proportions of low-income elderly and uninsured patients than other hospitals. Medicare's failure to live up to its statutory requirements has implications for hospitals nationwide, and NAUH believes that Medicare should live up to its legal obligation to pay out at least the legally required minimum amount of payments as outliers. The threshold proposed for 2007 will not enable Medicare to achieve this goal.

Medicare Outliers: NAUH's Proposed Solution

NAUH believes that CMS's current approach to calculating Medicare's outlier threshold does not work. While NAUH would welcome an opportunity to work with CMS officials to develop a better methodology, we believe the agency's first priority at this time should be to develop a more appropriate threshold for fiscal year 2007 – a threshold that will enable Medicare to meet its statutory obligation. The proposed threshold of \$25,530 will not achieve this end and will keep Medicare out of compliance with the statutory requirement yet again.

For this reason, NAUH suggests an interim approach: CMS should use a ratio, based on the current threshold and its likely percentage of overall PPS payouts, to revise the threshold and ensure that outliers constitute at least 5.1 percent of overall PPS payments. This would enable CMS to use projections instead of a formula that clearly is not working and would lead to a decrease, instead of an increase, in the FY 2007 threshold.

An alternative would be to calculate what the outlier threshold would need to be for the current (FY 2006) year to enable outlier payments to account for at least 5.1 percent of Medicare PPS payments and then to use that figure as the FY 2007 threshold.

Yet another alternative would be to calculate an FY 2007 threshold that would result in Medicare expending 5.5 percent of inpatient payments on outliers. Because in recent years outlier payments have fallen short of the statutory requirement of five to six percent, calculating based on a target threshold of 5.5 percent instead of 5.1 percent might improve Medicare's chances of having outlier payments reach the required level.

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We appreciate your attention to the concerns we have expressed about the proposed increase in the Medicare outlier threshold for fiscal year 2007 and welcome any questions you have about our organization, this issue, or our rationale for the positions we have stated in this letter.

Sincerely,

Ellen J. Kugler, Esq.
Executive Director