

NATIONAL ASSOCIATION OF URBAN HOSPITALS

Private Safety-Net Hospitals Caring for Needy Communities

July 8, 2004

Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue S.W., Room 443-G
Washington, D.C. 20201

**Subject: CMS-1428-P
Postacute Care Transfers**

Dear Dr. McClellan:

I am writing on behalf of the National Association of Urban Hospitals (NAUH) to express our opposition to the proposed changes in Medicare inpatient PPS regulations governing how Medicare will select DRGs to be subject to the acute-care transfer policy. We believe that the proposed changes in this regulation are overly broad and give policy-makers too much discretion over this matter.

Medicare Inpatient Transfer Policy: The Situation Today

When the current acute-care transfer policy was first introduced, the Health Care Financing Administration, as predecessor to the Centers for Medicare & Medicaid Services (CMS), established specific criteria for the selection of DRGs for which this acute-care transfer policy would be applicable. Based on those criteria, the rule originally was made applicable to ten DRGs. Over the years, that number has grown, and today, the Medicare acute-care transfer policy applies to 28 Medicare DRGs.

Medicare Inpatient Transfer Policy: The Proposed Change in Regulations

In the proposed Medicare inpatient PPS regulation published in the *Federal Register* on May 18, CMS has changed the criteria to be applied in determining whether the Medicare acute-care transfer policy should be applied to individual Medicare DRGs. Specifically, it has added a new set of criteria that could significantly increase the number of DRGs now eligible to become subject to the acute-care transfer policy. In addition, CMS has applied these new criteria immediately and added three new DRGs to the current list of 28 DRGs to which the Medicare acute-care transfer policy currently applies.

Medicare Inpatient Transfer Policy: The Objections of NAUH

NAUH respects the purpose behind the new criteria for determining the applicability of the Medicare acute-care transfer policy: a desire to prevent hospitals from abusing transfers so they can maximize their

Medicare revenue. Nevertheless, we object to the means through which CMS has chosen to do this for two reasons.

First, we believe there should have been a phased implementation of this new approach. Instead of publishing new criteria and immediately applying those new criteria to three new DRGs, we believe that CMS first should have published the new criteria as a proposed regulatory change and invited comment on the new criteria before proceeding to their immediate implementation. Understandably, we believe that many people will focus primarily, if not solely, on the product of the new criteria: the three new DRGs to be covered by the transfer policy. We believe that the new set of criteria themselves should first be the subject of public consideration and debate before they are formally applied to new Medicare DRGs.

Second, we believe that the new set of criteria are themselves overly broad and give too much discretion to CMS to apply the acute-care transfer policy in the future. While we appreciate the conservativeness of this initial implementation – that is, the application of the transfer policy to only three new DRGs – we are concerned that future efforts will not be so conservative and that policy-makers will have at their disposal a very powerful new tool through which to implement wide-ranging and potentially damaging changes in the Medicare program. As we read the new set of criteria, they could be applied in a manner that could potentially add many new DRGs to the list of those now subject to the acute-care transfer policy. In so doing, they could end up inappropriately penalizing hospitals that are legitimately pursuing the best courses of treatment for their patients. Because they are so overly broad, moreover, we believe that the new set of criteria could fundamentally alter Medicare policy as envisioned and articulated by Congress.

Medicare Inpatient Transfer Policy: NAUH's Proposed Solution

Based on the concerns outlined above, NAUH urges CMS to withdraw the proposed new set of criteria for application of the acute-care transfer policy to new DRGs and to rescind plans to apply that policy to the three new DRGs stipulated in the proposed regulation. If CMS is intent on applying the transfer policy to more DRGs, as is its prerogative, we propose that it go about doing so in a fairer, more traditional manner, as follows:

1. Publish the new proposed criteria as a proposed change in regulations, complete with an appropriate time-frame for public comment.
2. Receive public comment and make any changes in the proposed criteria deemed necessary based on that public comment and appropriate reconsideration.
3. Publish the new criteria, as amended, as new regulations.
4. Publish, as a proposed change in regulations, a list of proposed new DRGs to be added to the current list of 28 DRGs covered by the acute-care transfer policy, complete with an appropriate time-frame for public comment.
5. Publish new DRGs to be covered by the acute-care transfer policy, as amended, as new regulations.

This is a fairer, more inclusive process – a more appropriate way of implementing such important public policy.

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About the National Association of Urban Hospitals

The National Association of Urban Hospitals (NAUH) advocates for adequate recognition and financing of private, non-profit, urban safety-net hospitals that serve America's needy urban communities. These private, urban safety-net hospitals differ from other hospitals in a number of key ways: they serve communities whose residents are much older and poorer; they are far more reliant on Medicare and Medicaid for revenue; they provide far more uncompensated care; and unlike public safety-net hospitals, they have no statutory entitlement to local or state funds to underwrite their costs. NAUH's role is to ensure that when federal officials make policy decisions, they understand the implications of those decisions for these distinctive private, urban safety-net hospitals. NAUH pursues its mission through a combination of vigorous, informed advocacy, data-driven positions, and an energetic membership with a clear stake in the outcome of public policy debates.

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We appreciate your attention to the concerns we have expressed about the proposed change in the Medicare inpatient PPS regulation governing transfer policies and welcome any questions you have about our organization, this issue, or our rationale for the position we have stated in this letter.

Sincerely,

Ellen J. Kugler, Esq.
Executive Director