

NATIONAL ASSOCIATION OF URBAN HOSPITALS

Private Safety-Net Hospitals Caring for Needy Communities

November 13, 2003

Office of the Inspector General
U.S. Department of Health and Human Services
Room 5246 Cohen Building
330 Independence Avenue SW
Washington, DC 20201
Attention: OIG-53-P

RE: File Code OIG-53-P - Proposed Rulemaking: Medicare and Federal Health Care Programs: Fraud and Abuse; Clarification of Terms and Application of Program Exclusion Authority for Submitting Claims Containing Excessive Charges” (42 CFR Part 1001, RIN 0991-AB13)

To Whom It May Concern:

I am writing on behalf of the National Association of Urban Hospitals (NAUH) to convey our concerns regarding proposed rulemaking by the Department of Health and Human Services’ Office of the Inspector General (OIG) regarding “Medicare and Federal Health Care Programs: Fraud and Abuse; Clarification of Terms and Application of Program Exclusion Authority for Submitting Claims Containing Excessive Charges” (42 CFR Part 1001, RIN 0991-AB13).

NAUH believes that the proposed rule will not help the OIG identify providers that are overcharging for medical services and therefore should be withdrawn.

The Proposed Rule Will Not Facilitate Identifying Hospitals That Overcharge Government Programs

NAUH believes that the OIG’s primary purpose in promulgating this rule is to facilitate identifying hospitals that overcharge. Unfortunately, we do not believe that the chosen means will achieve the desired end.

The proposed rule will not work, we believe, because there are simply too many variables to consider and there is too much variation in how hospitals charge and bill their patients for one simple formula to identify hospitals that overcharge for their services. Different hospitals employ different means of charging their patients and are located in 50 different states with 50 different Medicaid programs and 50 different sets of laws, rules, and regulations under which they must operate. They also interact with hundreds of different insurers, each of which has its own requirements, and with each of which it has separate contractual agreements based on charges. The proposed rule attempts to simplify all of this variation into a single formula, and it does not – and we believe it cannot, no matter how much adjusting is undertaken – ever successfully serve as a single, decisive, useful tool for definitively identifying hospitals that overcharge for their services. NAUH believes that the question of how to identify hospitals that are overcharging is far too complex to reduce to a single formula. Using such a formula is too simplistic and could easily and incorrectly identify innocent hospitals as overchargers.

Instead, we believe that the OIG should identify overcharging hospitals on a case-by-case basis and use the authority it already has to take steps to exclude such hospitals from the Medicare program. Excluding overcharging hospitals will ultimately be a better deterrent to overcharging than burdening hospitals with this rule.

The Proposed Rule Will Be Burdensome and Cause Problems and Extra Costs For Hospitals

NAUH also believes that the proposed rule, if implemented, will impose an inappropriate and costly administrative burden on hospitals. If nothing else, the proposed rule will scare hospitals – even hospitals that know they are not overcharging. While scaring hospitals is not, in itself, a terrible way to discourage overcharging, we do not believe that the extent of the fear this rule will instill is appropriate.

While the proposed rule does not call for hospitals to calculate their usual charges on any kind of schedule, conscientious hospitals – including those that no one would remotely suspect of overcharging – will feel compelled to perform this calculation themselves on a regular basis, if not continually. This would be an extraordinary amount of work that would challenge hospitals' resources and information systems. Hospitals would be forced to spend significant amounts of money to perform these calculations, thereby driving up health care costs in a manner that has nothing to do with the actual delivery of care.

Equally important, implementation of the proposed rule could force many hospitals to revise their entire charge structures – a process that would be long, difficult, and extremely costly. In particular, many would have to renegotiate their contracts – many of which state hospitals' fees as a percentage of usual charges – with some or even all of the insurers whose members they serve. These are fees negotiated in good faith, and with full understanding of their meaning, by both parties, but because of the proposed rule, some could suddenly jeopardize hospitals' ability to participate in Medicare. In addition, many of those contracts cover a period of more than one year and cannot necessarily be renegotiated right away, raising the possibility that hospitals seeking to come into compliance with the proposed rule could lose large sums of money while waiting for an opportunity to renegotiate their contracts with insurers. Finally, thousands of hospitals could be forced to renegotiate their contracts with insurers – a process that would be extremely costly and add considerably to health care costs without producing any additional actual health care.

Conclusion

For the reasons stated above, the National Association of Urban Hospitals believes that the OIG should withdraw the proposed rule regarding excluding providers from Medicare because they overcharge and instead use its existing authority to exclude such hospitals. We appreciate your attention to our views on this matter and welcome any questions you may have about them.

Sincerely,

Ellen J. Kugler, Esq.
Executive Director