

August 31, 2015

Andy Slavitt, Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1633-P  
P.O. Box 8013  
Baltimore, MD 21244-1850

**RE: CMS–1633–P, Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Short Inpatient Hospital Stays; Transition for Certain Medicare-Dependent, Small Rural Hospitals under the Hospital Inpatient Prospective Payment System (Vol. 80, No.130), July 8, 2015**

Dear Mr. Slavitt:

On behalf of our nearly 200 member hospitals and health systems, the Florida Hospital Association (FHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) hospital outpatient prospective payment system (OPPS) proposed rule for calendar year (CY) 2016, as published in the July 8, 2015 *Federal Register*. While we support many of the proposals contained in the proposed rule, such as the revisions to the two-midnight policy, we do have concerns about, and are opposed to, CMS's proposal to apply a 2 percentage point reduction to the OPPS conversion factor based on an overestimation of the impact of laboratory test packaging.

As it relates to the two-midnight policy, we are pleased that CMS's proposal is more reflective of the agency's longstanding policy that recognizes the important role of physician judgment and individual patient needs in the hospital admission decision-making process. Under current policy, the time-based threshold overrides the longstanding role of physician judgment by placing emphasis on the expected amount of time – not the level of care – as the driving factor in an admission decision.

CMS has also announced changes to its medical review strategy that will allow Quality Improvement Organizations (QIOs) to review patient status claims beginning no later than October 1. We are supportive of CMS using QIOs as the first line of medical review instead of the Recovery Auditors (RAs) because we believe this will diminish the high volume of inappropriate claim denials by RAs based on patient status determinations. Nevertheless, many details related to this new review process are still unknown and we request that CMS provide more information as soon as possible to assist hospitals in preparing for these audits. We urge CMS to quickly publish rules/guidance related to –

- The QIO review process;
- The RAreview process;
- Process for determining whether a hospital warrants referral to a RA; and
- Other changes to the RA program.

In addition, because the proposed changes to the two-midnight policy would not be effective until January 1, 2016, it does not make sense for QIOs to audit claims from October 1 to December 31 under the current two-midnight policy, only to switch three months later to the revised policy. This would allow more time for both hospitals and CMS to properly implement CMS's new policies and revised admission criteria.

As addressed in comments by the American Hospital Association, the agency's proposed cut to the OPSS conversion factor due to an overestimation of the impact of laboratory test packaging is ill-conceived and founded on questionable assumptions, a poorly described methodology and data that are not publicly available. Basing a cut on CY2014 claims data is inappropriate, as CMS's CY2014 instructions to hospitals regarding how to bill for laboratory tests were confusing and changed several times. Therefore, any "unexpectedly high" volume of separately payable laboratory tests that CMS observed in CY2014 claims data does not reflect a permanent change to hospital coding and billing practices, but rather is the direct result of CMS's unclear and frequently shifting billing instructions.

Thank you again for the opportunity to comment on this proposed rule. If you have any questions, please do not hesitate to contact me at (407) 841-6230 or [kathyr@fha.org](mailto:kathyr@fha.org).

Sincerely,

A handwritten signature in cursive script that reads "Kathy Reep".

Kathy Reep  
Vice President/Financial Services