

WISCONSIN HOSPITAL ASSOCIATION, INC.



March 12, 2010

Charlene M. Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: 2010 Hospital Outpatient Prospective Payment System Rule: Physician Supervision

Dear Administrator Frizzera:

The Wisconsin Hospital Association, an organization that advocates on behalf of over 130 hospitals including 59 critical access hospitals throughout the state, appreciates the efforts you and your staff have made to address hospital concerns with the CMS standard for physician supervision of outpatient therapeutic services. In particular, we appreciate the guidance provided during the March 9, 2010, Rural Health Open Door Forum. We look forward to the written guidance promised during the Forum and anticipate that it will address a number of the concerns we have heard from Wisconsin hospitals. We ask that CMS provide the written guidance as quickly as possible.

As your staff has heard from many people, the physician and non-physician supervision standard in CMS's 2010 hospital outpatient prospective payment system rule ("OPPS") would create a significant burden for many rural hospitals. The standard, a well-intentioned effort to help ensure the delivery of high quality health care, will have the unintended effect of actually ending the delivery of what has been high quality health care in some of our most remote communities. A number of Wisconsin's communities simply cannot meet the OPPS standard for supervision.

We understand that there is a tension between increasingly stringent standards and the ability to provide access to health care and there must be a balance. We greatly appreciate CMS's Marc Hartstein's acknowledgement in correspondence to the American Hospital Association that the physician supervision standard for outpatient diagnostic services does not apply to CAHs. We ask that CMS strike a the balance here, too, in such a way that recognizes rural communities often must provide health care differently because of staffing issues, remoteness, scale, and many other factors.

During the Forum, we appreciated that your staff recognized that in many hospitals it would be appropriate for an emergency department physician to supervise an outpatient therapeutic service such as the observation unit. Your staff said that a hospital would need to determine if the emergency physician would be considered "available" or "uninterruptible" given the hospital's particular emergency department volume and staffing. The CMS staff recognized that it is likely much of the emergency department physician's time in a rural hospital where the supervision standard is an issue would be interruptible. And if there are times when his or her time is not interruptible, there are different ways to

address those circumstances. This flexibility goes a long way toward alleviating rural hospital concerns with the supervision standard.

As a caller pointed out during the Forum, while the flexibility is extremely helpful, hospitals need to be able to determine if they are in compliance with the CMS standard. Complicating hospitals' ability to know they are meeting the appropriate standards, the flexibility demonstrated by CMS during the Forum is contrary to statements made by Medicare Intermediaries. We ask for written guidance from CMS that (1.) provides clear standards that would allow hospitals to rely on their emergency department physicians for supervision of outpatient therapeutic services in appropriate circumstances and (2.) provides a more formal acknowledgement that the physician supervision standard for outpatient diagnostic services does not apply to CAHs.

Again, WHA appreciates CMS's attention to this important issue for rural hospitals across Wisconsin and the country.

Sincerely,



Stephen F. Brenton
President