WISCONSIN HOSPITAL ASSOCIATION, INC.

Critical Access Hospital Relief Act of 2015

Harmonize "96 Hour" Regulations (HR 169, S 258)

Legislation is needed to correct and harmonize two competing 96 hour statutes for Critical Access Hospitals (CAHs). Legislation has been introduced under S. 258 and HR 169, the Critical Access Hospital Relief Act of 2015, to do so. The Wisconsin Hospital Association strongly supports this legislation.

The issue came to light in sub-regulatory guidance stemming from the two midnights policy in the FY 2014 Prospective Payment System final rule. In that guidance, CMS stated that, as a *condition of payment*, physicians at CAHs must certify that a beneficiary may reasonably be expected to be discharged or transferred within 96 hours after admission to the CAH. **If a physician cannot certify the reasonable expectation that a Medicare beneficiary will be discharged or transferred within 96 hours, then Medicare Part A payment is inappropriate. The guidance came as a surprise to many CAHs across the country who were operating under the assumption that CAHs may provide inpatient care for a period of time that does not exceed, *on an annual average basis, 96 hours per patient*.**

Therein lies the problem. In other words, the CMS guidance highlighted two different and competing 96 hour rules for CAHs:

- Conditions of Participation – a 96 hour per patient *annual average* (See: 42 USC 1395i-4)
- Conditions of Payment – barring unforeseen circumstances, 96 hour per patient for payment purposes (See: 42 USC 1395f)

Unfortunately, the two differing 96 hour rules seem to stem from the 1999 Balanced Budget Refinement Act (BBRA), which made important improvements to the CAH program, including establishing the 96 hour annual average for participation in the Medicare program. However, the BBRA does not appear to have appropriately cross-referenced the corollary payment statute as well.

CAHs across the country have expressed significant concern with a 96 hour cap for payment purposes. The concerns are that the policy will deny care close to home for numerous types of patients since there are any number of reasons a physician may not reasonably believe certain patients could be discharged within 96 hours. Several examples of those situations include: chronic diseases, pneumonia, respiratory issues and certain procedures. If this policy is not addressed legislatively it would reduce access to care in local communities by forcing those patients to seek care at other, non-local hospitals.

WHA Position

WHA and Wisconsin's Critical Access Hospitals strongly support the legislative fix to the 96 hour rule as contained in HR 169/S. 258, the Critical Access Hospital Act of 2015. We thank Sen. Baldwin and Reps. Duffy, Kind, Ribble, Pocan and Grothman for quickly cosponsoring. We ask all of Wisconsin's Delegation to consider leading, cosponsoring and supporting legislative efforts to address this issue.

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