California Hospital Association

October 8, 2021

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

SUBJECT: Medicare Program; CMS 10765; Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services: Information Collection Activities: Submission for OMB Review; Comment Request, Federal Register (Vol. 8, No. 171), September 8, 2021

Dear Administrator Brooks-LaSure:

On behalf of our more than 400 member hospitals and health systems, including approximately 80 inpatient rehabilitation facilities (IRFs), the California Hospital Association (CHA) is writing to urge CMS to withdraw the proposed *Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services*. At a minimum, implementation should be deferred until hospitals and medical providers, including IRFs, can stabilize and recover from the impacts of the COVID-19 public health emergency (PHE).

CHA has several concerns about the proposed demonstration. Those concerns were outlined in our letter — included as an attachment to this document — submitted during the previous 60-day comment period. **We continue to believe that this program is unlikely to yield valuable information and may lead to unforeseen negative consequences — including reduced access to care for Medicare beneficiaries — and we urge CMS to withdraw the proposed demonstration.**

In addition, while CMS has not announced a timeline for implementation of the demonstration, we are concerned that it could happen during the ongoing and sustained COVID-19 PHE. With no end in sight, the pandemic has created a nationwide crisis affecting all aspects of health care operations and patient care. For the foreseeable future, addressing the unique challenges of the PHE will continue to require significant investment of time and resources.

As California deals with its fourth significant surge, IRFs continue to provide medically necessary care to patients recovering from COVID-19, including many with severe clinical manifestations of "long COVID," which is not yet fully understood. This is in addition to the vulnerable patients IRFs typically serve, many of whom are now being treated for more complex cases due to delays in care during the pandemic. We

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are concerned that any additional administrative or operational requirements, even minimal ones, will divert limited resources and place additional stress on providers at a time when they are already struggling.

This is particularly true for IRFs that are operated as distinct part units of general acute care hospitals, where many operational functions are integrated with the larger hospital or hospital system. **Should CMS move forward with the demonstration, we urge the agency to delay implementation until at least 12 months following the end of the COVID-19 PHE.**

CHA appreciates the opportunity to provide input on this demonstration. If you have any questions, please do not hesitate to contact me at mhoward@calhospital.org or (202) 488-3742, or my colleague Pat Blaisdell, vice president, continuum of care, at pblaisdell@calhospital.org or (916) 552-7553.

Sincerely,
/s/

Megan Howard
Vice President, Federal Policy

Attachment: CHA Comment Letter, February 16, 2021, "SUBJECT: CMS-10765; Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services: Proposed Information Collection Request, Federal Register (Vol. 85, No.241), December 15, 2020

CALIFORNIA HOSPITAL ASSOCIATION

Providing Leadership in Health Policy and Advocacy

February 16, 2021

Liz Richter
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

SUBJECT: CMS-10765; Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services: Proposed Information Collection Request, Federal Register (Vol. 85, No.241), December 15, 2020

Dear Acting Administrator Richter:

On behalf of our more than 400 member hospitals and health systems, including approximately 80 inpatient rehabilitation facilities (IRFs), the California Hospital Association (CHA) is pleased to submit comments on the Centers for Medicare & Medicaid Services (CMS) notice of intention to collect information from the public to develop and implement a proposed Review Choice Demonstration for inpatient rehabilitation facility (IRF) services.

CHA recognizes CMS' important role in providing appropriate oversight to providers and its work to ensure that Medicare beneficiaries are able to access the appropriate level of medically necessary care and treatment. However, we do not believe that the proposed Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services is necessary. Rather, we believe that this program is unlikely to yield valuable information and may lead to unforeseen negative consequences, including reduced access to care. **We urge CMS to discontinue implementation of the proposed Review Choice Demonstration and the associated information collection effort.**

PURPOSE OF THE DEMONSTRATION

The Review Choice Demonstration is predicated upon inaccurate data and false assumptions about IRF compliance and reimbursement.

The stated goal of this five-year demonstration is to develop improved methods for the investigation and prosecution of fraud in the provision of care or services. As evidence of fraud and abuse in the Medicare IRF benefit, CMS cites "high improper payment rates" and provision of care that was not reasonable and necessary. CHA strongly disagrees with CMS' conclusion that the data support widespread fraud and abuse. Our perspective on this issue is informed by our previous extensive work in addressing inappropriate payment denials, including during the original recovery audit contractor demonstration.

We believe that the reported error rate is significantly overstated, secondary to many problems with contractor reviews of IRF services, such as payment denials inconsistent with IRF regulations, "technical denials," and inconsistent and often vague interpretation of medical necessity admission criteria. The

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high rate of IRF denials overturned upon appeal speaks to the inaccuracy and inconsistency of the current review processes.

Medical Necessity
A recommendation for IRF admission is based on a comprehensive clinical assessment process that includes a review of the patient's specific medical and functional status and potential for improvement under the supervision of the rehabilitation physician. As noted in the *Medicare Benefits Policy Manual,* IRFs are responsible for developing a thorough preadmission screening process that includes all required elements, with a focus on completeness, accuracy, and the extent to which it supports the appropriateness of the IRF admission decision. The rehabilitation physician must document that they have reviewed and agree with the findings and results.

In recognition of this complex decision-making process, the *Medicare Processing Claims Manual* instructs contractors to include "explicit rationale that describes why the items or services at issue do not meet Medicare guidelines." Despite this clear direction, IRFs continue to receive denials for admissions that make general statements that the services are not medically necessary, with little to no discussion of the specific individual or the logic applied to reach this decision. Many of these denials are subsequently appealed and successfully overturned, which can take months or even years. As a result, these denials are often included in initial data that purport to illustrate that IRFs are providing unnecessary care, and to justify additional aggressive claims review action.

CHA urges CMS to delay the development and implementation of the proposed Review Choice Demonstration until such time that it can be demonstrated that current contractors are conducting thorough reviews and applying IRF medical necessity criteria accurately. Additionally, denials based on a contractor assessment of medical necessity that differs from the rehab physician's assessment and are being appealed should not be considered as an example of improper payment or admission that the appeal process for that claim has been completed.

Technical Denials
We are also aware that IRF members often receive "technical denials," where payment for appropriate and medically necessary care is denied based on a minor error or delay in documentation. (e.g., signatures of team members at clinical conference, or lack of time stamp on an MD's review of pre-admission screening). While we recognize that IRFs are responsible for adhering to all IRF regulations, including those that reflect minor shortfalls or errors in documentation, we disagree with CMS' contention that they are reflective of a widespread pattern of fraud or abuse that requires a review program of this magnitude. In fact, including these types of denials as evidence of "improper" payment masks the fact that these admissions were otherwise necessary and appropriate, and ultimately beneficial to the patients involved.

In summary, the cumulative effect of these factors is to greatly exaggerate the rate of improper billing by IRFs, which in turn leads to the dangerous — and erroneous — conclusion that some beneficiaries were admitted to an IRF unnecessarily and/or did not receive the services they require. In this context, the proposed Review Choice Demonstration is unnecessary and unlikely to yield meaningful information.

ADMINISTRATIVE BURDEN

The proposed Review Choice Demonstration is unnecessarily burdensome.

The requirement for an initial review of 100% of the IRF's claims is excessive and will be a significant drain on provider resources. The medical records documentation for a single IRF case can be quite extensive and may even include documentation from the preceding acute hospitalization at a different facility. The preparation and submission of all necessary records for such a high volume of claims will require significant resources and staff time. Additionally, we anticipate that the administrative burden may be compounded by the need to respond to erroneous findings and inaccurate statements from the reviewer, as has occurred in previous third-party review processes and described earlier. In short, proceeding with this extensive and time-consuming review will only serve to divert valuable resources from patient care and will not result in meaningful, actionable information.

DEMONSTRATION DESIGN

CHA strongly asserts that the current proposal for the Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services is unnecessary and overly burdensome, and we urge CMS to discontinue its implementation. However, if CMS chooses to pursue this program, we would like to offer the following suggestions for consideration.

Contractor Education

As noted previously, many denials for payment of IRF services appear to be based on a contractor's incorrect interpretation or application of Medicare requirements and policy. Such inappropriate denials result in additional cumbersome and time-consuming follow-up communication between the IRF and the reviewer and throughout the appeal process. The high rate of successful payment appeals by IRFs underscores the need to ensure that all Medicare contractors are fully versed in Medicare policy and standards, in order to minimize erroneous denials and the associated impact on administrative burden and patient access.

Additional Clarity for Spot Check Review Eligibility

Similarly, the demonstration must address and clarify what constitutes meeting the target affirmation or claim approval rate (90%) that will allow an IRF to proceed to a spot check review, including how to account for erroneous denials by the contractor. Specifically, if the initial review process includes denials that are later overturned due to contractor error, the IRF's performance relating to the target affirmation rate must be re-calculated. If the re-calculation results in the IRF meeting the affirmation target, the IRF must be provided the opportunity to proceed to spot check review on a timely basis.

CHA appreciates the opportunity to comment on the Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services. If you have any questions, please do not hesitate to contact me at mhoward@calhospital.org or (202) 488-3742, or my colleague Pat Blaisdell, vice president, continuum of care, at pblaisdell@calhospital.org or (916) 552-7553.

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