

rec'd 3/7/06

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CMS 10064

## ELDER LAW AND DISABILITY RIGHTS SECTION

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March 6, 2007

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CMS, Office of Strategic Operations and Regulatory Affairs,  
Division of Regulations Development – C  
Attention: Bonnie L. Harkless  
Room C4-26-05  
7500 Security Blvd.  
Baltimore, Maryland 21244-1850

Re: **71 Fed. Reg. 68708 (November 27, 2006)**  
**Final Regulations, Notification of Hospital Discharge Appeal Rights**

Dear Ms. Harkless:

Thank you for your consideration of this letter in opposition to the above noted Final Regulations. As Chair of the Elder Law & Disability Rights Section of the State Bar of Michigan, I represent close to 1700 Section members. The Section Council has requested that I write to inform CMS of our opposition to these regulations because of the projected detrimental impact the regulations will have on Medicare beneficiaries.

Specifically, we are requesting that CMS review the regulations as written and consider making amendments that will provide beneficiaries with greater protection and access to needed care services. More specifically, the Final Regulations should be amended to provide:

- 1) Medicare beneficiaries with appeal rights at least as protective as those under current regulations;
- 2) That hospitals should be required to give beneficiaries a detailed notice regarding rationale supporting the decision for discharge; and
- 3) That beneficiaries subject to a short stay should continue be provided with the Hospital Issued Notice of Non-Coverage (HINN) prior to discharge.

Thank you again for every consideration.

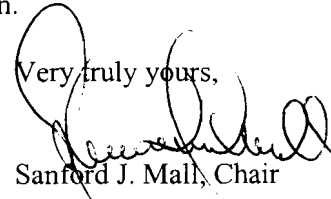
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**EDWARD L. HAROUTUNIAN**  
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Very truly yours,

  
Sanford J. Mall, Chair

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March 6, 2007

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**Re: 71 Fed. Reg. 68708 (November 27, 2006)**  
**Final Regulations, Notification of Hospital Discharge Appeal Rights**

Dear Ms. Harkless:

Thank you for your consideration of my comments in opposition to the above noted Medicare regulation. I make this comment in my individual capacity as well as my capacity as Chair of the Elder Law and Disability Rights Section of the State Bar of Michigan. As an attorney practicing Elder Law and more specifically providing Elder and Disability Care Advocacy, I am quite concerned that the above noted Final Regulations will result in restricting access to needed services and ultimately diminished care.

I understand that the Final Regulations are a result of the Weichardt v. Leavitt lawsuit. Among other things the negotiated settlement of the case was to help improve Medicare beneficiary appeal rights when being discharged from a hospital or being terminated from Medicare coverage. The Final Regulations however, shorten the appeal period for Medicare beneficiaries to appeal to their QIO. Medicare beneficiaries will also no longer be entitled to receive Hospital Issued Notice of Non-coverage (HINN) prior to discharge. Therefore, beneficiaries will likely not have adequate information available as a basis for an appeal of discharge. Finally, these new regulations give hospitals virtual amnesty against recourse for failure to provide a Medicare beneficiary with a second review of the Important Message from Medicare, when the hospitalization is a short stay. This third concern is especially poignant given Code 44 Regulations.

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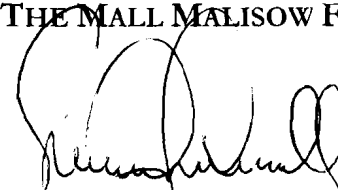
Ms. Bonnie L. Harkless  
CMS, Office Strategic Operations and Regulatory Affairs  
March 6, 2007  
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In summation, the Final Regulations should be amended to provide:

- 1) Medicare beneficiaries with appeal rights at least as protective as those under current regulations;
- 2) That hospitals should be required to give beneficiaries a detailed notice regarding rationale supporting the decision for discharge; and
- 3) That beneficiaries subject to a short stay should continue be provided with the Hospital Issued Notice of Non-Coverage (HINN) prior to discharge.

Thank you for your consideration of the above comment in opposition of the Final Regulations affecting the Important Message from Medicare and Notification of Hospital Discharge Appeal Rights. Please feel free to contact me for further clarification of our position or if I can be of any further assistance in any other way.

Very truly yours,  
**THE MALL MALISOW FIRM, PC**



Sanford J. Mall

SJM/km