American Hospital Association

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1 of 3

May 2, 2007

CMS-10066

Ms. Carolyn Lovett
OMB Desk Officer
OMB Human Resources and Housing Branch
New Executive Office Building, Room 10235
Washington, DC 20503

Re: CMS-10066 (OMB#: 0938-New) Proposed Detailed Discharge Notice (Vol. 72, No. 66), April 6, 2007

Dear Ms. Lovett:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 37,000 individual members, the American Hospital Association (AHA) appreciates this opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed new "Detailed Discharge Notice" and its related paperwork requirements, which were submitted to the Office of Management and Budget (OMB) on April 6.

This proposed new form would implement elements of the revised regulations on notification of Medicare beneficiaries regarding their hospital discharge appeal rights, which were published in the November 27, 2006 *Federal Register*. It would replace the "Hospital Inpatient Notice of Non-coverage" (HINN) as the means of informing Medicare beneficiaries and Medicare Advantage (MA) enrollees of the specific reasons why continued hospital-level care is no longer needed or covered when beneficiaries ask a Quality Improvement Organization to review the appropriateness of their discharge.

The AHA believes that a few items, mostly in the instructions that accompany the form, require clarification. As indicated in our companion letter on the proposed revisions to the "Important Message from Medicare," we are concerned that CMS will be unable to provide hospitals with the final notice language and instructions early enough to allow sufficient time for hospitals to effectively comply with the new requirements by the regulation's July 1 implementation date.

ISSUES REQUIRING CLARIFICATION PRIOR TO IMPLEMENTATION

As the AHA and state hospital associations worked with hospitals to do pre-implementation

2 of 3

planning, several issues that needed clarification were identified. **We recommend that OMB require CMS to address the issues explained below prior to final approval and implementation of the new notice.**

- **Clarify the level of detail required by the notice.** The instructions tell hospitals and MA plans to supply detailed and specific reasons why hospital services are no longer needed or covered, in full sentences and in "plain English." First, all references in the instructions to "plain English" should be changed to "plain language" or "laymen's terms." Second, even though this is the "detailed" notice, it really is intended to be specific to the individual's admission and easily understood by the beneficiary. As such, focusing the instruction on providing specific reasons in plain language and dropping the word "detailed" would be clearer.

- **Clearly distinguish between provider and plan responsibility regarding provision of the detailed notice.** Throughout both the supporting statement and the instructions for completing the form, the text refers to hospitals providing the detailed notice to traditional Medicare program beneficiaries and MA plan enrollees. The rules published last November clearly state that the hospital is responsible for preparing and delivering the notice only to traditional Medicare program beneficiaries. The MA plan is responsible for preparing and delivering the notice to its enrollees.

- **Clarify responsibility for coverage of additional care costs during appeals.** The regulations clearly stated that, for Medicare prospective payment system admissions under the traditional program, there is no additional payment to hospitals. However, for MA enrollees, the plan must pay the hospital for those additional days of care. Similarly, clarification is needed regarding who is responsible for additional days when Medicare is a secondary payer.

- **Clarify when the HINN would still be required.** Page 3 of the supporting statement under the section on "Duplication of Similar Information" states that the HINN only would be used in the extremely rare instance where a patient decides to remain in the hospital past the planned discharge date and chooses not to initiate a review of the discharge decision. CMS has not yet proposed its planned revision of the HINN; CMS will presumably clarify when the HINN still must be used rather than this new form in its proposal. It is unclear that this is the only type of instance when the HINN would be used. Our members indicate that there are a variety of circumstances under which the HINN is used and seek clarification as to when this new form does not replace the HINN.

- **Provide on CMS' Web site the text of the notice translated into the top 15 languages hospitals most frequently encounter.** Almost one-fifth of the U.S. population speaks a language other than English at home. Hospitals are required to provide language services for such individuals but do not receive compensation for the cost of those services. The size of this population and the vast number of languages now being encountered make it very difficult for individual hospitals to provide translated documents. Since the text of this notice cannot be altered by the hospital, CMS should obtain and provide translations of the key beneficiary notices. The Social Security Administration has a list of 15 frequently

3 of 3

encountered languages that it uses for such purposes. Last year, the AHA's research affiliate, the Health Research and Educational Trust, conducted a survey of hospital language services that identified 15 languages that at least 20 percent of hospitals encounter frequently. They are: Spanish; Chinese; Vietnamese; Japanese; Korean; Russian; German; French; Arabic; Italian; Laotian; Hindi; Polish; Tagalog; and Thai.

TIMING OF IMPLEMENTATION

It is our understanding from CMS staff that, under the best-case scenario, the OMB-approved notice and instructions will not be made available to hospitals until late May or early June. With the July 1 effective date approaching, we are concerned that hospitals will have insufficient time prior to the effective date to print the new notices, prepare written internal policies and instructions and train staff. If even less time is available, we believe they will be unable to meet the July 1 date. And, if the approved notice and instructions are not out by July 1, we do not know what to tell our members to do, since they cannot use a notice that has not been approved by OMB. Since we do not know exactly when OMB will be able to act, **the AHA urges that once OMB approves the form hospitals be given a minimum of 60 days to prepare before they are required to implement the new requirements.**

If you have any questions concerning our comments, please feel free to contact me or Ellen Pryga, director for policy, at (202) 626-2267 or epryga@aha.org.

Sincerely,

Rick Pollack
Executive Vice President

Cc: Bonnie Harkless (CMS)