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July 16, 2009

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The Honorable John Dingell
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable George Miller
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable Pete Stark
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry A. Waxman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Re: America's Affordable Health Choices Act of
2009, provisions addressing Medicare skilled
nursing facility reimbursement

Dear Congressmen Dingell, Miller, Stark, and Waxman:

The Center for Medicare Advocacy supports the four changes proposed to the Medicare skilled nursing facility (SNF) reimbursement system that are made by your health care reform legislation, America's Affordable Health Choices Act of 2009.

Congress enacted the prospective payment system (PPS) for SNFs in order to more effectively control excessively rising costs for SNF care. In the decade since the Centers for Medicare & Medicaid Services (CMS) implemented the new reimbursement system, however, both the Government Accountability Office (GAO) and the Medicare Payment Advisory Commission (MedPAC) have repeatedly confirmed that SNFs' Medicare reimbursement rates far exceed the costs of the care that is actually provided to most residents. The GAO has also reported that Congress's increasing Medicare reimbursement specifically for nurse staffing did not result in increased numbers of nurses providing care to Medicare beneficiaries and that SNFs have placed residents in rehabilitation classifications yielding the best reimbursement rates, while not providing sufficient rehabilitation services to residents. MedPAC has repeatedly recommended changes to SNF reimbursement policy and rates, including not paying a market basket increase. CMS has proposed

some significant changes for SNF reimbursement for Fiscal Year 2010 and additional changes for Fiscal Year 2011 to correct some of these problems. We hope the proposed changes are incorporated in the final regulations, which will be published later this month.

At the same time that most facilities are overpaid by Medicare, Medicare rates for some limited number of SNF residents may not be sufficient. Medicare beneficiaries who use ventilators, for example, are among those who have the most difficulty gaining admission to SNFs.

The proposed legislation addresses both concerns effectively and correctly. The bill reigns in overpayments (freezing the market basket, §1101; incorporating productivity improvements, §1103(b); and changing the recalibration factor to retain budget neutrality when CMS expanded the number of resident classifications under PPS from 44 to 53, §1111(a), as CMS first proposed in May 2008) and recognizes the need for upward adjustments in non-therapy ancillary costs, including enactment of an outlier payment system (§1111(b), (c)).

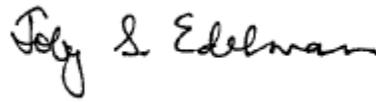
In our comments on the proposed reimbursement rates for Fiscal Year 2010, we urged CMS to develop a SNF-specific wage index. At present, CMS uses the hospital wage index in setting SNF rates. The Bureau of Labor Statistics annually reports SNF-specific wages and these are considerably lower than hospital wages. Developing a SNF-specific index based on data from the Bureau of Labor Statistics could save more than \$2 billion a year. Congress may want to direct CMS to develop a SNF-specific wage index.

The nursing home industry will argue that any reduction in SNF rates will result in the loss of tens of thousands of jobs, nursing home bankruptcies, and poorer quality care for residents. We do not accept these scare tactics as true and urge Congress to reject them as well. Multiple GAO and MedPac reports have reiterated for many years that the nursing home industry has been significantly overpaid by Medicare, both by PPS and before. The GAO reported that the nursing home chains' bankruptcies of the late 1990s were caused by factors beyond PPS, primarily, for the two corporations discussed by the GAO, Sun Healthcare Group, Inc. and Vencor, Inc., high capital-related costs and substantial non-recurring charges (asset impairment losses). Both corporations agreed with the GAO's analysis. Residents have not received the quality of care and the rehabilitation services that the Medicare program so generously pays the nursing home industry to provide. The Nursing Home Reform Law enacted by Congress in 1987 requires facilities that choose to participate in either Medicare or Medicaid, or both, to provide each resident with the care and services he or she needs in order to attain and maintain his or her highest practicable physical, mental, and psychosocial well-being. The law also requires facilities to have sufficient staff to meet residents' individual needs, as determined by their assessments and care plans. Facilities that voluntarily choose to participate in these federal health care programs must meet these federal Requirements of Participation. They may not evade their statutory responsibility to provide residents with the high quality care they need by claiming that reimbursement is too low.

To ensure that SNFs provide residents with the care they need and do not inappropriately lay off necessary staff, we urge Congress to increase the survey and certification budget so that CMS and state survey agencies can effectively monitor SNF care and impose sanctions, as required.

Thank you for introducing America's Affordable Health Choices Act of 2009.

Sincerely,

A handwritten signature in black ink that reads "Toby S. Edelman". The signature is written in a cursive, slightly slanted style.

Toby S. Edelman
Senior Policy Attorney

The Center for Medicare Advocacy is a private, non-profit organization, founded in 1986, that provides education, analytical research, advocacy, and legal assistance to help older people and people with disabilities obtain necessary health care. The Center focuses on the needs of Medicare beneficiaries, people with chronic conditions, and those in need of long-term care. The Center provides training regarding Medicare and health care rights throughout the country and serves as legal counsel in litigation of importance to Medicare beneficiaries nationwide.