



November 17, 2016

VIA ELECTRONIC MAIL

Andrew Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Request for Meeting to Discuss Unintended Consequences of ICD-10 Conversion on Access to Inpatient Hospital Rehabilitation for Medicare Beneficiaries with Brain Injuries and Select Orthopedic Conditions

Dear Acting Administrator Slavitt:

The Brain Injury Association of America (BIAA), working in concert with the Coalition to Preserve Rehabilitation (CPR), the American Academy of Physical Medicine and Rehabilitation (AAPM&R), and the American Medical Rehabilitation Providers Association (AMRPA), requests an in-person meeting with you to discuss the unintended consequences of the ICD-10 conversion on access to inpatient rehabilitation hospitals and units (IRFs) for Medicare beneficiaries with brain injuries and select orthopedic conditions, and to explore possible remedies to this problem.

CPR is a coalition of national consumer, clinician, and membership organizations that advocate for policies to ensure access to rehabilitative care so that individuals with injuries, illnesses, disabilities and chronic conditions may regain and/or maintain their maximum level of health and independent function.

Background: On October 1, 2015 all providers were required to start using the ICD-10-CM code set in their documentation of health care services. In previous rulemaking, CMS translated the ICD-9 codes that would qualify under the ICD-10 code set for purposes of meeting “presumptive compliance” with the 60% Rule, the IRF requirement that at least 60% of IRF patients must have one of 13 specified diagnoses in order for a hospital to qualify as an IRF. The new ICD-10-CM codes were effective on or after October 1, 2015.

Soon after the new codes became effective, CPR started hearing from member organizations that patients with certain conditions—who were previously included in calculating a provider’s

presumptive compliance rate—were omitted under the new CMS ICD-10 code set. In other words, there are a number of ICD-10-CM codes that are no longer accepted under the presumptive compliance methodology that had been routinely accepted under the ICD-9 code set. This has the effect of creating a major disincentive for IRFs who are close to the 60% margin to admit certain patients, those whose conditions are described by codes that are no longer being accepted by CMS for presumptive compliance with the 60% Rule.

Based on data generated by eRehabData®, a firm contracted by the American Medical Rehabilitation Providers Association to analyze IRF data, we understand that two different types of Medicare beneficiaries, namely patients with brain injuries and orthopedic conditions such as hip fractures and major multiple fractures, are impacted by CMS's ICD-10 conversion. In other words, CMS' conversion from the ICD-9 codes to the ICD-10 codes is having the unintended effect of limiting access to IRF care for Medicare beneficiaries with brain injuries and other orthopedic conditions.

Efforts to Resolve the Access Problem Caused by the ICD-10 Conversion: In late 2015, leaders from the AMRPA and eRehabData® met with CMS officials to discuss this problem. AMPRA also met in 2016 with CMS to further discuss the issue. We understand that CMS is well aware of this ICD-10 conversion problem has not yet committed to correcting it. On April 21, 2016, I wrote to you in my capacity as President and CEO of the BIAA to raise concerns about access to IRF care for Medicare beneficiaries with brain injuries. In that letter, I strongly urged CMS to include a solution to the ICD-10 conversion problem in the annual proposed rule for the Inpatient Rehabilitation Facility Prospective Payment System (IFR-PPS), and requested that such relief be applied retroactively to 60% rule compliance review periods that started on October 1, 2015.

On June 20, 2016, I again wrote to you on behalf of BIAA in the context of responding to the proposed rule for the *Medicare Program; Inpatient Rehabilitation Facility (IRF) Prospective Payment System for Federal Fiscal Year 2017 (CMS-1647-P)*. In this letter, I expressed concern that CMS had not addressed this issue in the proposed rule. I strongly urged CMS to explicitly clarify in the final rule that ICD-10 coding will precisely mirror the ICD-9 codes that were phased out, in order to maintain equal access to IRF care for these beneficiaries and eliminate the unintended consequences of the coding conversion. Further, we asked CMS to apply this clarification retroactively to October 1, 2015. The CPR Coalition, the AAPM&R, and the AMRPA also sent comment letters that stressed the same points and respectfully tried to impress upon CMS our collective view that without any resolution, the ICD-10 conversion would continue to present barriers to certain beneficiaries in accessing IRF care.

We were very disappointed to learn that the final rule to the IFR-PPS made no mention of this issue. Since the final rule was released, we have learned of 3rd quarter 2016 Medicare IRF data that confirms our continuing concern with this problem. Medicare patients with brain injuries are supposed to be 100% compliant with the 60% rule but, due to the error in the conversion to ICD-10, Medicare traumatic brain injury patients are currently only being counted as 38.87% presumptively compliant, compared to Q3 2015 when they were 100% presumptively compliant. This means that over 8,000 Medicare patients with brain injuries in FY2017 are inappropriately not being counted as compliant which has a deleterious effect on access to care, not only for those patients, but for other rehabilitation patients as well. According to analysis of Medicare IRF data by eRehabData®, the ICD-10 conversion has resulted in a 10.4% decrease in patients admitted to IRFs with traumatic brain injuries when compared to this same quarter in the previous year. This equates to nearly 1,200 patients when these data are annualized; patients who qualify for IRF care but were not admitted. We strongly suspect the reason for this restriction in access is the ICD-10 conversion issue.

Meeting Request: As a result of this ongoing restriction in access to Medicare beneficiaries with brain injuries and certain orthopedic conditions, the BIAA, in conjunction with the CPR Coalition Steering Committee and the rehabilitation physicians and rehabilitation hospitals, would like to meet with you and your staff at your earliest opportunity to discuss this problem and explore potential solutions. Current CMS treatment of these brain injury, hip fracture and major multiple fracture codes creates barriers to access to IRF care that, we believe, must be corrected by CMS expeditiously.

We look forward to hearing from your office in response to this meeting request. We can be reached by contacting Peter Thomas or Steve Postal at (202) 466-6550 or at peter.thomas@powerslaw.com or steve.postal@powerslaw.com.

Sincerely,



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