

April 28, 2005

Dr. Mark McClellan, Administrator
Centers for Medicare and Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244-1850

RE: Medicare's Three-Day Prior Hospital Stay Rule

Dear Dr. McClellan:

On behalf of the Board of Directors of Lane Council of Governments (LCOG), the policy body for the Area Agency on Aging for Lane County, Oregon, I write to urge the Centers for Medicare and Medicaid Services (CMS) to amend Medicare's three-day prior hospital stay rule. This rule, which establishes one of the conditions upon which Medicare payment for skilled nursing facility (SNF) care hinges, is out of date. It was designed for a different era; health care procedures and technologies have advanced significantly over the past 40 years. Payment methods for medical care, including hospital care, are different, as well. As a result of these advances and changes, lengths of stays in hospitals have dropped significantly. Unfortunately, the three-day prior stay rule has remained unchanged, making it progressively more difficult for Medicare beneficiaries to gain access to Medicare coverage to pay for needed skilled nursing facility care.

A hospital inpatient admission is no longer the sole marker of a significant decline in health status. An example of a condition that in the past would have resulted in an extended hospitalization is a stroke. At the time that Medicare was enacted, stroke victims would likely have remained hospitalized for at least four days, and perhaps many more. Now, patients may be released from the emergency room after a stroke. But, these patients still need rehabilitation. We believe that patients whose conditions warrant skilled nursing care should have the option of a Medicare-paid stay at a SNF even if, and perhaps especially if, medical advances have shortened their need for acute hospitalization. For these reasons, we urge CMS to drop Medicare's antiquated three-day prior hospital stay rule and, in its

place, use the following criterion to trigger Medicare payment for skilled care in a nursing facility: that the patient has experienced a significant change in condition which requires sub-acute skilled nursing care.

As I am sure you are aware, in 1989 the Health Care Financing Administration and Congress concluded that the three-day prior stay rule should be eliminated. Several months later, the Omnibus Medicare law that ended the rule was rescinded due to protests about unrelated changes in Medicare premiums. Although the wisdom of eliminating the three-day rule was not questioned, the issue has not been revisited. LCOG urges CMS and Congress to, once again, study this issue and embrace the solution we propose above.

We wish to thank you in advance for your willingness to address this issue.

Sincerely,

Gary Williams, Chairperson
LCOG Board of Directors