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# WHY IT IS NECESSARY TO REVISE THE 75% RULE AND PROTECT REHAB MEDICAL NECESSITY STANDARDS

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## THE PROBLEM

- Because CMS' list of approved conditions within the 75 Percent Rule is limited, patients outside that list are denied vital rehabilitation services in order for rehabilitation facilities to comply with the Rule. The effect is that facilities are forced to use the "75% Rule" to determine an individual patient's admission rather than the actual medical condition of the patient.
- The adverse impact of the flawed 75% rule regulation is far greater than anticipated and the impact continues to evolve. The government projected first year reductions of \$10 million affecting 1,751 patients, but in the first year of implementation at the 50% threshold, approximately over 40,000 patients were adversely affected and cuts to rehab hospitals amounted to an estimated \$212 million. Field data now estimates that as many as 88,000 Medicare patients have not received IRF services in the first two years since the 75% Rule took effect.
- Inpatient rehabilitation admission decisions should be based on medical necessity, functional deficits and needs of the individual patient, not arbitrary diagnostic categories which are in some Local Coverage Decisions (LCDs). Unfortunately, increasing medical necessity denials, due to LCDs and other contractor actions (including activities of Recovery Audit Contractors, known as RACs) are also altering rehabilitation hospital and unit admission practices and affecting the quality of patient care.

## THE SOLUTION:

The rehabilitation field supports legislation that is essential both to ensure that Medicare beneficiaries and others continue to have access to intense rehabilitative care in the appropriate inpatient setting and to the continued viability of inpatient rehabilitation hospitals and units. The legislation will:

- **EXTEND INDEFINITELY THE COMPLIANCE THRESHOLD AT 60 PERCENT AND CONTINUE THE USE OF COMORBIDITIES. (NOTE: unless Congress acts, the compliance threshold jumps to 65% for cost-reporting periods beginning on or after July 1, 2007.)** By freezing the compliance threshold, patient access will be improved and inpatient rehabilitation hospitals and units will not be forced to convert or close more beds or decrease staff. Instead, rehabilitation hospitals and units can focus on providing quality care to Medicare beneficiaries and non-Medicare patients. Through the inclusion of patients with co-morbidities, inpatient rehabilitation hospitals and units will be able to provide necessary care to patients who might otherwise be excluded.
- **CODIFY MEDICAL NECESSITY STANDARDS CURRENTLY DELINEATED IN RULING HCFAR 85-2:** Adherence to the existing Medicare standard will end the unfair use of local coverage decisions (LCDs) and eliminate increasing confusion among providers as to CMS' medical necessity standard.
- **REQUIRE CMS TO PROVIDE CONGRESS INFORMATION ON WHAT IS HAPPENING TO PATIENTS DENIED CARE:** A quota-based system mistreats patients. By providing information on the consequences of such a system, Congress can evaluate how it can be replaced.
- **CHANGE THE NOMENCLATURE USED BY CMS TO MORE ACCURATELY DESCRIBE THE HOSPITALS PROVIDING SPECIALIZED INPATIENT REHABILITATIVE CARE.**