



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

<http://finance.senate.gov>

For Immediate Release
Thursday, Nov. 18, 2004

Grassley Confirms Ongoing Monitoring and Clinical Involvement in 75 Percent Rehab Rule

WASHINGTON – Sen. Chuck Grassley, chairman of the Senate Committee on Finance, today released his exchange with the Medicare administrator requesting information about the implementation of the final rule on inpatient rehabilitation facilities, commonly referred to as the “75 percent rule.”

In response to Grassley’s letter, the Medicare administrator responded with details about the agency’s efforts to monitor the implementation of the rule, and its ongoing efforts to inform its policies with clinical expertise.

The text of Grassley’s letter follows here. The text of the reply from Administrator Mark McClellan is listed separately.

November 17, 2004

Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
314G Hubert H. Humphrey Building
200 Independence Avenue S.W.
Washington, D.C. 20201

Dear Dr. McClellan:

Thank you for your continued leadership on directing the Medicare and Medicaid programs. You have done a tremendous job in a short amount of time on implementing the Medicare Modernization Act of 2003 and I look forward to working with you and your staff in the upcoming year.

I am writing to request some additional information regarding the Final Rule on inpatient rehabilitation facilities published in the Federal Register on May 7, 2004, commonly referred to as the “75 percent rule.” As you know, there is much interest among Members of Congress and their constituents regarding the implementation of this rule. As Chairman of the Senate Finance

Committee, I would like to understand what steps the agency taking to address the issues brought to light by the rehabilitation providers.

First and foremost, I am concerned that the 75 percent rule may cause patients who need rehabilitative care to be denied that care and would like to understand how the agency is monitoring the implementation of this regulation. What specific steps has the agency been taking to monitor implementation? Have there been any denials of appropriate rehab care and, if so, what evidence does the agency have that indicates that there have been any such denials?

Second, I am aware that there are a variety of settings where a patient may receive rehabilitation services. For some patients, inpatient rehab is the optimal setting to receive care, and I feel those patients should be able to receive that care. Some have indicated there may be a strong financial incentive to steer less complicated rehab patients toward inpatient services when they may not be warranted. Please comment about the various rehab settings a patient may be directed to and how the payment rates differ according to each setting.

Third, the rehab community has called for a delay in the implementation of the Local Medical Review Policies (LMRPs) concerning medical necessity. You are well aware, Dr. McClellan, of my concern and vigilance regarding waste, fraud and abuse in the Medicare program. What specific impact would a delay in implementing the LMRPs have in terms of monitoring rehab facilities?

Fourth, I hear many complaints from rehab providers that CMS failed to involve clinical experts and in-the-field researchers in crafting the 75 percent rule, and therefore, its final rule is based on bad information. How much and what kind of research was conducted in the establishment of this rule? What steps were taken to ensure the final rule reflected a consensus opinion of medical rehabilitation experts? As rehabilitation care is not a static field, what future study in this area is contemplated and how will it be carried out?

Last, I have heard numerous facilities complain that the financial impact of the rule will cause a reduction of available rehab services, thus further limiting access to care. Does the agency possess any financial performance data that might show how rehab providers are faring financially?

Thank you in advance for your response to these pressing questions.

Sincerely,

Charles E. Grassley
U.S. Senator