American Hospital Association

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August 13, 2013

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: Medicare Advantage Organizations' Handling of Sequestration Cuts

Dear Ms. Tavenner:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our more than 43,000 individual members, the American Hospital Association (AHA) is seeking clarification and further guidance from the Centers for Medicare & Medicaid Services (CMS) on how the budget sequester, as authorized by the *Budget Control Act of 2011*, is being implemented by Medicare Advantage Organizations (MAOs). We are concerned that many MAOs are erroneously passing along to hospitals a 2 percent reduction in contracted payment amounts without regard to the terms of their contracts with those providers.

In CMS's May 1 guidance to plans on sequestration, MAOs were instructed to review contracts individually to determine whether and how sequestration might affect payment to contracted providers. If their contracts use Medicare *rates* as a reference point, plans should NOT pass along the sequestration reduction because CMS has not changed the published payment rates to implement hospitals' share of sequestration cuts.

Some of our hospital members and many state hospital associations have advised us that a significant number of MAOs appear to have a basic misunderstanding of the budget sequester mechanism. As a result, many MAOs are automatically passing along the 2 percent payment reduction to network providers, regardless of the terms of the contract. Specifically, we are concerned that, in cases where provider contracts use the Medicare rates as a reference point, hospitals are unfairly being subjected to the 2 percent reduction even though Medicare rates themselves have not been reduced. In these instances, plans seem to be taking action based on the misperception that Medicare rates (rather than payments) have been reduced. These plans also seem to suggest that CMS issued a rulemaking to reduce rates to implement sequestration, which of course is not the case.

Below is an excerpt from a plan communication sent regarding the application of sequester cuts:

> *As I am sure you are aware, as a result of sequestration, effective April 1, 2013, the **default Medicare rate reimbursed to hospitals** and the premium revenue received by Medicare Advantage (MA) plans have been reduced by two percent (2%)…It is important to note that a reduction was only implemented for those services (e.g. inpatient acute care) and at those hospitals where the language in the individual hospital agreement…**establishes a reimbursement rate tied to the default Medicare rate**. In these instances, the two percent (2%) reduction was implemented in order to ensure that reimbursement continues to be reflective of the agreed upon contractual terms contained in…individual hospital provider agreements with that individual hospital.* (Emphasis added.)

As this excerpt demonstrates, there is confusion on the part of plans regarding the difference between Medicare rates and Medicare payment. Since no modifications or changes to provider rates have taken place, any 2 percent reduction taken due to the sequester is limited to MAO provider contracts that tie to Medicare *program payments* made under parts A, B and D.

We urge CMS to provide additional guidance to MA plans explaining that Medicare rates themselves have not been altered by sequestration and that CMS has not issued a "default Medicare rate" that incorporates a 2 percent reduction. Specifically, we urge CMS to clarify that there is a distinct difference between Medicare *rates* and what Medicare *would otherwise pay*. Doing so, we believe, would help avoid the growing likelihood that hundreds of private disputes between providers and plans will need to be resolved individually – disputes that could disrupt MAO enrollee access to services.

We appreciate your consideration of this issue and look forward to your response. If you have any questions or would like to discuss this further, please contact me or Ellen Pryga, policy director, at (202) 626-2267 or epryga@aha.org.

Sincerely,

/s/

Rick Pollack
Executive Vice President