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September 21, 2005

The Honorable Charles B. Rangel
The Honorable William M. Thomas
United States House of Representatives
Washington, D.C 20515

RE: *Preserving Patient Access to Inpatient Rehabilitation Hospitals Act of 2005* (H.R. 3373/S. 1405)

Dear Representatives Rangel and Thomas:

The American Academy of Physical Medicine and Rehabilitation (AAPM&R) is writing to express concern regarding the clinical relevance of the 75% rule, and to urge you to support (H.R. 3373/S. 1405), the *Preserving Patient Access to Inpatient Rehabilitation Hospitals Act of 2005*. AAPM&R is the national medical specialty society representing over 7,000 physical medicine and rehabilitation physicians, also called physiatrists. Approximately 90% of all physiatrists practicing in the United States are members of AAPM&R. Physical medicine and rehabilitation, recognized as a board-certified medical specialty in 1947, focuses on restoring function to people with problems ranging from simple physical mobility issues to those with complex cognitive involvement. Physiatrists also treat patients with musculoskeletal and neurologic disorders as well as acute and chronic pain.

As you may know, the legislation would maintain a 50% compliance threshold used to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility for two years. The bill would also establish a National Advisory Council on Medical Rehabilitation to recommend to Congress and the Department of Health and Human Services (HHS) how to update the rule to ensure that it is clinically appropriate and that Medicare beneficiaries will not be severely restricted in their future access to medically necessary care in inpatient rehabilitation facilities (IRFs).

Developed more than 20 years ago, the 75% rule is one of seven criteria that the Centers for Medicare and Medicaid Services (CMS) promulgated to help define a rehabilitation hospital or unit for the purpose of determining its eligibility for being reimbursed under the Inpatient Rehabilitation Prospective Payment System (PPS) instead of the acute care hospital PPS. Unfortunately,



CMS recently revised and reinstated the use of this rule in a manner that confuses the notions of defining a rehabilitation hospital with determining the appropriateness of an individual patient for care at that type of hospital. This confusion has started a cascade of events that is seriously compromising the rehabilitation hospital capability on a national level, seriously jeopardizing continuing rehabilitation care for patients. Rehabilitation units and hospitals are closing, and occupancy rates are declining at an alarming rate. This, of course, translates into restricted access to inpatient rehabilitation for Medicare beneficiaries and others with physical disabilities, chronic illnesses, and injuries that require a high intensity of rehabilitation care.

In April 2005, the Government Accountability Office (GAO) issued a report on the 75% rule titled, "More Specific Criteria Needed to Classify Inpatient Rehabilitation Facilities". The report recognized that the key concept for appropriateness is a patient's functional status, however, the GAO failed to acknowledge the inadequacy of the rule's current list of conditions to include a clinically appropriate standard relating to the services provided by inpatient rehabilitation facilities and the fact that additional categories are needed. In fact, the GAO's recommendation that the CMS pursue studies, research, and other activities and refine the rule based upon the evidence and findings of those activities reasonably suggests that the rule's current conditions are an insufficient measure by which inpatient rehabilitation hospitals and units should be classified.

As physicians concerned about the comprehensive care of all of our patients, it is AAPM&R's belief that the 75% rule represents an arbitrary, obsolete and unnecessarily exclusionary set of clinical categories and compliance with the rule as stated, threatens access to inpatient rehabilitation for patients including post-surgical orthopedic patients. Physical medicine and rehabilitation's patient population typically has extensive multi-system co-morbidities that place them at risk for complications following surgery. Given the propensity towards and incidence of post-operative complications, the extent of medical oversight that exists in IRFs is clearly warranted. The outcome following innovative, restorative and life/limb-saving medical and surgical care is truly dependent on the quality of medical rehabilitation with intensive medical surveillance for early identification of complications, as well as functional restoration across physiological, psychological and vocational spheres. On a *daily basis* in an IRF, patients typically require care for services including, surgical wound management, surveillance for limb thrombosis, management of co-existing medical problems/conditions temporarily destabilized following

surgery and pain management. In addition, the potential increased readmission rate to acute care facilities because of increased complication rates if patients are denied access to IRF care following, for example, major joint replacement, simply cannot be ignored.

The principal criteria that define an inpatient rehabilitation hospital or unit include intensive, medically supervised rehabilitation services in a coordinated and goal-directed manner where meaningful progress is expected in a reasonable period of time. Physiatrists' clinical experience in the provision of care for a diverse variety of medical/surgical conditions provides unequivocal evidence that the 75% rule no longer accurately represents those individuals who require and benefit from inpatient rehabilitation. Therefore, AAPM&R urges you to support H.R. 3373/S. 1405.

As physicians integrally involved in the day-to-day care of patients in inpatient rehabilitation facilities, AAPM&R thanks you for your interest in this topic, as well as for your willingness to accept ideas and recommendations from the medical/surgical community.

AAPM&R would be happy to continue this dialogue with you via conference call or in person. Please feel free to contact Suzanne Butler at the American Academy of Physical Medicine and Rehabilitation at 312-464-9700 or email her at sbutler@aapmr.org if you wish to discuss this matter in more detail or have any comments or questions.

Sincerely,



Bruce M. Gans, MD
President

CC: The Honorable Frank LoBiondo
The Honorable Nita Lowey
The Honorable John Tanner