

BACKGROUND

PRESERVING ACCESS TO INPATIENT REHABILITATION HOSPITALS ACT OF 2007 (S. 543 AND H.R. 1459)

Access to intensive rehabilitation services provided in inpatient rehabilitation hospitals and units for Medicare beneficiaries and others is in jeopardy. These services are often the lifeline from the hospital back to a person's home. This purpose of this document is to provide background information on the Medicare inpatient rehabilitation entitlement and a clear statement of the issue.

When Congress enacted the Medicare program, it included older Americans and certain persons with disabilities among its beneficiaries. The number of people with disabilities on Medicare below the age of 65 now totals over 6 million. Among the health care services recognized under Medicare is the provision of intensive, coordinated rehabilitation services provided by inpatient rehabilitation hospitals and rehabilitation units of acute care hospitals.

A primary purpose of rehabilitation services provided in an inpatient rehabilitation facility is to enable an individual to regain and/or maintain his or her maximum level of independent function as quickly as possible so that the individual can return to his or her own home and job (whenever feasible), rather than being placed in a nursing home. In other words, these intense, coordinated inpatient rehabilitation services are often the lifeline from the hospital back to individuals' homes, rather than placement into institutions.

In order for an individual to be admitted to an inpatient rehabilitation hospital, he or she must meet strict criteria issued by Medicare—the services must be reasonable and necessary based on an assessment of each person's individual care needs.

In order to be certified as an inpatient rehabilitation hospital or unit, the provider must meet criteria established by Medicare. Once a hospital or unit is certified, it is eligible for enhanced payment to cover the additional costs associated with providing intensive, comprehensive, and coordinated rehabilitation services through a multi-disciplinary team. One of the criteria used by Medicare to certify facilities is the so-called "75% Rule." This rule requires that providers maintain a particular percentage of patients receiving treatment for one or more of thirteen (13) conditions specified by Medicare (e.g., spinal cord injury, amputation). The Rule is being phased in over time—currently the percentage is 60%, with an increase to 65% on July 1, 2007 if Congress does not take immediate action.

In order to retain their certification, inpatient rehabilitation hospitals and units are being placed in the untenable position of turning away patients whose medical condition and rehabilitation needs meet the strict admissions criteria promulgated by Medicare, but who do not happen to fall within one of the thirteen listed conditions. Practically speaking, inpatient rehabilitation hospitals and units are being forced to establish health care quotas—i.e., they must manage/limit the mix of the individuals they treated based on the 75% Rule (a certification/payment rule) rather than on the basis of clinical judgment or rehabilitation need.

The following examples describe persons who do not fall within the 13 listed conditions and who, therefore, may be turned away by the inpatient rehabilitation facility to ensure that it maintains its certification.

- An individual requiring a hip or knee replacement and who also has one or more medical complications or “comorbid conditions” such as a severe heart and pulmonary condition, diabetes, and/or a pre-existing amputation on another limb.
- Cancer patients undergoing chemotherapy that need intensive rehabilitation to improve both motor and cognitive functioning and patients who have undergone extensive cardiac surgery.

But the impact of the 75% Rule extends far beyond those individuals whose diagnoses do not fall within the thirteen conditions, to all consumers who may require inpatient rehabilitation. Many inpatient rehabilitation hospitals and units are having difficulty meeting their quotas as established by the 75% Rule and are being forced to downsize or close their doors altogether. The result is a significant decrease in access to inpatient rehabilitation for all individuals.

In sum, because of the arbitrary 75% rule, beneficiaries’ access to medically reasonable and necessary inpatient rehabilitation services is being jeopardized, which is impacting their quality of life, particularly their ability to expeditiously return to their homes and live independently.

Bipartisan bills have been introduced in the House and Senate to preserve access to safe and effective treatment provided in inpatient rehabilitation hospitals so that beneficiaries can return to the highest functional level possible, living in their homes and returning to their jobs (whenever feasible). Senator Ben Nelson (D-NE) is the chief sponsor. Currently, there are 40 co-sponsors from both sides of the aisle (e.g., Kennedy (D-MA), Hatch (R-UT), Clinton (D-NY), Harkin (D-IA), Specter (R-PA)). The bills are entitled the “Preserving Access to Inpatient Rehabilitation Hospitals Act of 2007” (S. 543 and H.R. 1459). If enacted, the bills will lessen the negative impact of the 75% rule on patients and the providers who serve them. Specifically, the bills would accomplish the following objectives:

- Require a compliance rate of no greater than 60%, *i.e.*, 60% of the patient population in the facility must have one of the thirteen listed conditions, but all the patients must continue to meet strict admissions criteria established by CMS. This is the current threshold.
- Continue the use of medical complications (*i.e.*, “comorbidities”) in assessing the need for inpatient rehabilitation. Currently, a patient is counted toward the required threshold if the patient is admitted for either a primary or comorbid condition on the list in the rule. Unless Congress takes action, this authority to count patients based on comorbidity will be eliminated.
- Codify the current standards which has been in place for over 20 years for determining medical necessity of beneficiaries served in rehabilitation hospitals and units;
- Report to Congress with recommendations for classifying inpatient rehabilitation hospitals and units in a manner that does not force such hospitals and units to turn away needy beneficiaries (House bill only).