

Advocacy Urges CMS to Minimize Impacts of 75 Percent Rule on Inpatient Rehabilitation Facilities

On November 3, 2003, the Office of Advocacy (Advocacy) filed a comment letter with the Centers for Medicare and Medicaid Services (CMS) concerning a proposed rule known as the “75 Percent Rule.” A complete copy of Advocacy’s comment letter may be accessed at

<http://www.sba.gov/advo/laws/comments>.

- On September 9, 2003, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule in the *Federal Register* titled, “Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility.” The proposed rule seeks to change the criteria Medicare uses for classifying a hospital or unit of a hospital as an inpatient rehabilitation facility (IRF). The criteria used for the IRF designation is more commonly referred to as the “75 Percent Rule.” The rule provides that 75 percent of an IRF’s total patient population require intensive rehabilitation services for treatment of one or more of 10 medical conditions to be eligible for Medicare payment during its most recent cost reporting period. CMS was concerned that the 75 Percent Rule had not been updated in years, and that IRFs were not adequately complying with the requirements of the rule.
- The proposed rule will reduce the 75 percent patient population threshold to 65 percent for three years while CMS studies how to best manage the IRFs. After the three years, the patient population threshold level will return to 75 percent. CMS increased the number of qualifying medical condition categories from 10 to 12 in an effort to be more specific about certain arthritic conditions that qualify for payment under the 75 Percent Rule. CMS acknowledged that the rule will have a significant impact on small businesses and therefore CMS prepared an initial regulatory flexibility analysis that described alternatives designed to limit the burden.
- In its comment letter, Advocacy encouraged CMS to consider adopting a less burdensome regulatory alternative by lowering the patient population threshold to 50 percent for the three years that CMS is studying the 75 Percent Rule. Advocacy believes that this alternative better assures that IRFs can continue to operate while CMS researches potential long-term solutions on regulating IRFs.

For more information, visit Advocacy’s web page at www.sba.gov/advo or contact Linwood Rayford at (202) 205-6533.