HCFA Publishes Final Rule for Payment of Preadmission Services

by Kathleen A. Frawley, JD, MS, RRA, and Donald D. Asmonga

On February 11, the Health Care Financing Administration (HCFA) published the final rule—with two revisions—regarding payment for preadmission services. The regulations became effective March 13.

On January 12, 1994, an interim final rule with comment period was published. The interim final rule provided that inpatient hospital operating costs include certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to three days before the date of the patient's admission to the hospital. These provisions implemented amendments made to section 1886 (a)(4) of the Social Security Act by section 4003 of the Omnibus Budget Reconciliation Act of 1990.

At the time of publication of the interim final rule, the three-day payment window applied to hospitals under the prospective payment system (PPS) and to excluded hospitals. Since publication of the interim final rule, section 1886(a)(4) was further amended by section 110 of the Social Security Act Amendments of 1994 (Public Law 103-432). That amendment revised the payment window for hospitals excluded from the PPS to include only those services furnished during the one-day period (as opposed to three-day) before a patient's hospital admission.

Based on comments received in response to the interim final rule, HCFA reaffirmed its determination that ambulance services are not subject to the payment window, even when furnished during the preadmission period by the admitting hospital or by an entity that it wholly owns or operates.

The final rule has been revised to clarify that services provided by home health agencies be excluded from the payment window provisions. In addition, HCFA clarified that this exclusion extends to other services provided under Part A—that is, services furnished by skilled nursing facilities and hospices. Diagnostic services provided by these facilities that would be payable under Part B are subject to the window.

The final rule has been revised to exclude chronic maintenance renal dialysis services from the preadmission services that are subject to the payment window. It is noted that outpatient chronic renal dialysis services are distinct from the type of hospital services that Congress designed the payment window provision to address.

The final rule notes that HCFA has defined services as being related to the admission only when there is an exact match between the ICD-9-CM diagnosis code assigned for both the preadmission services and the inpatient stay.

Competing Confidentiality Bills under Discussion

In an effort to jump start the debate on health information confidentiality, the Senate Labor and Human Resources Committee held a hearing on February 26 to discuss several legislative proposals. Calling confidentiality "one of the most pressing issues confronting our healthcare system," committee chairman Sen. Jim Jeffords (R-VT) declared again to a full hearing room that this issue is a priority for the committee in 1998.

The committee focused its discussion on two legislative proposals. The first is a draft bill, titled The Medical Information Protection Act (MIPA). MIPA is being developed by Sens. Robert Bennett (R-UT) and Jeffords and is expected to be introduced in the coming weeks. Sen. Patrick Leahy's (D-VT) legislation, The Medical Records Privacy and Security Act, S. 1368, was also under review by the committee. Both Bennett and Leahy testified on behalf of their respective proposals.

Rounding out the witness list were individuals from an interesting cross section of the healthcare spectrum. Kathleen Sebelius, commissioner of the Department of Insurance, State of Kansas, testified on behalf of the National Association of Insurance

Commissioners (NAIC). Other witnesses were Christine Brunswick, vice president of the National Breast Cancer Coalition (NBCC), Janlori Goldman, director of the Health Privacy Project at the Institute for Health Care Research and Policy, Georgetown Medical Center, Mike Rhodes, MD, a physician at Intermountain Health Care, and Bonnie Rogers, DrPH, president of American Association of Occupational Health Nurses and an occupational health nurse and associate professor at the University of North Carolina at Chapel Hill. An additional witness, Julie J. McGowan, PhD, director of the Dana Medical Library and professor of the department of pediatrics at the University of Vermont, was scheduled to testify on behalf of the American Medical Informatics Association but was unable to appear due to inclement weather.

Sensing the growing importance of this issue, several senators made prolonged appearances at the hearing. In addition to Jeffords, Sens. Susan Collins (R-ME), Bill Frist (R-TN), Ted Kennedy (D-MA), Jack Reed (D-RI), and Paul Wellstone (D-MN) attended the hearing. Various staff members represented senators who were unable to attend.

Federal preemption of state law emerged as a central issue during the hearing. MIPA and S. 1368 contain different provisions regarding preemption of state law. MIPA would provide for complete preemption of state law, enabling a federal standard to be the law of the land. AHIMA has long supported this approach so that the current patchwork of confidentiality protections could be replaced by a uniform national standard for the use and disclosure of individually identifiable health information. In contrast, Leahy's legislation would create a federal floor of standards, allowing state laws that are presumably stronger than the federal standard to remain in place and permitting states to legislate or regulate additional protections above the federal standard. Although this approach would provide a standard to those states without any protections, it would still maintain and promote a lacework of varying protections.

Witnesses were split on the preemption question, with Rogers and Rhodes favoring the Bennett approach of complete preemption. Goldman, Brunswick, and Sebelius favored the Leahy approach. An interesting development regarding preemption concerned the members of the Senate Labor and Human Resources Committee. Hearing their questions and discussion, it seemed that the pendulum had shifted toward the Bennett approach of complete preemption. Collins, a former commissioner of the Maine Department of Professional and Financial Regulation, indicated her usual reluctance to preempt state laws. However, she believes that the current structure of health privacy laws demands that we need federal preemptive legislation in this instance. Frist, Jeffords, and Reed all stated a similar belief that preemption needs further study but alluded that the best of all state laws should be incorporated into a federal standard.

Another major distinction between the Bennett and Leahy proposals concerns providing patients with the ability to segregate portions of their medical records. The Bennett draft would treat all health information equally, not providing special protections for one type of information over another. Leahy's legislation would permit patients to dictate which portions of their medical record they want segregated. Brunswick was the only witness who supported the Leahy approach. AHIMA supports treating all individually identifiable health information with equally strong protections.

During the course of the hearing, other issues regarding access to identifiable information were discussed. These issues will demand close scrutiny and imaginative solutions:

- Law enforcement access for fraud and other investigations
- Legitimate uses of information for "healthcare operations" aside from specific patient care
- Health research
- Using health information for marketing purposes

Additional hearings may be held by the Senate Labor and Human Resources Committee or the Subcommittee on Government Management, Information, and Technology—of the House Committee on Government Reform and Oversight—on specific portions of confidentiality legislation as preemption and the subjects noted above come into action. AHIMA's Washington, DC, office has been working closely with the parties involved in the consideration of this landmark issue. As Congress progresses toward some closure with health information confidentiality legislation, we will continue to bring you the most up-to-date developments.

Kathleen A. Frawley *is AHIMA's vice president, legislative and public policy services, and* ***Donald D. Asmonga*** *is AHIMA's government relations representative.*

Article Citation:

Frawley, Kathleen A. and Donald D. Asmonga. "HCFA Publishes Final Rule for Payment of Preadmission Services." *Journal of AHIMA* 69, no. 5 (1998): 12-16.