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North Carolina Hospital Association

March 3, 2010

MEMORANDUM

TO: Chair, State Health Coordinating Council
Medical Facilities Planning Section

FROM: Mike Vicario, NCHA Vice President of Regulatory Affairs
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SUBJECT: Petition for Amendment to Policy AC-5

NCHA petitions the State Health Coordinating Council to amend Policy AC-5 to enable Critical Access Hospitals to count acute and swing bed days of care in the formula used to determine needed replacement capacity.

Background

Policy AC-5 (see attached) is currently used by the CON Section in its review of replacement bed projects. The "target occupancy" factors included in the policy assist the Section in determining the need for replacement of existing hospital beds. Hospitals with occupancy rates lower than those in the policy are not approved to replace beds for which they are unable to demonstrate need. In calculating the occupancy rate, Policy AC-5 permits "*only acute care bed days of care*" to be counted. This clause precludes an applicant from including days of care provided in psychiatric, rehabilitation or nursing home units to be used to justify replacement of acute care beds. However the clause also prevents consideration of the nursing care days provided in Medicare swing beds, thereby penalizing swing bed hospitals by limiting replacement projects to only the number of beds needed for acute care.

Swing Bed Hospitals

Swing Bed Hospitals are approved by the Centers for Medicare/Medicaid Services (CMS) to provide skilled nursing care in acute care beds. "*The Social Security Act (the Act) permits certain small, rural hospitals to enter into a swing bed agreement, under which the hospital can use its beds, as needed, to provide either acute or SNF care. As defined in the regulations, a swing bed hospital is a hospital or critical access hospital (CAH) participating in Medicare that has CMS approval to provide post-hospital SNF care and meets certain requirements.*"(*http://www.cms.hhs.gov/SNFPPS/03_SwingBed.asp*) Swing Bed Hospitals are located in rural areas where other options for providing a care continuum are

scarce. Many of them are also Critical Access Hospitals, and need this ability to "swing" from acute to skilled nursing in order to provide transitional and restorative care services.

SMFP Statement

Chapter 5 of the State Medical Facilities Plan states that "The North Carolina Department of Health and Human Services supports the use of 'swing beds' in providing long-term nursing care services in rural acute care hospitals." However the current requirement that hospital replacement projects reduce their licensed bed complement by the number of bed days used for nursing level care diminishes their capacity to serve their communities and may affect their ability to continue operating. NCHA seeks the State Health Coordinating Council approval to petition for amendment of the Policy (see attachment) to permit swing bed nursing care days of care to be included in the calculation.

Critical Access Hospitals

The Centers for Medicare & Medicaid Services (CMS) permits certain rural hospitals to be designated as Critical Access Hospitals (CAH) and receive cost-based reimbursement from Medicare. Critical Access Hospitals are limited by CMS to a certified capacity of 25 patients, and to a 96-hour annual average length of stay. These limitations can result in a greater impact on a CAH than on other Swing Bed Hospitals. Because of the first limitation, a CAH will likely not be able to obtain a CON to replace more than the maximum of 25 acute care beds for which it can be certified. The AC-5 restriction against counting skilled nursing swing bed days can further reduce the number of beds that may be replaced. A replacement project for a small Critical Access Hospital could therefore be limited to only a handful of beds, potentially eliminating its swing bed capacity. * This is especially problematic because of the second limitation whereby the hospital is limited to a 96-hour average length of stay. Therefore a CAH must be able to quickly find transitional and rehabilitative skilled nursing beds for a patient in need of placement to a lower level of care. As these hospitals exist in areas where resources are limited, other options for providing this care may not exist, ultimately requiring lengthier patient stays in the acute unit.

Proposed Change

NCHA proposes that all swing bed days provided in Critical Access Hospitals be considered in the formula used in Policy AC-5 (See Proposed Policy below). According to Division of Health Service Regulation licensure data there are 21 Critical Access Hospitals in North Carolina that indicate that they have swing beds. A few of these have recently finished bed replacement projects. Others may not have the capital required for a replacement project, but may upgrade their obsolete bed configurations to provide a more suitable environment for their current services. For those Critical Access Hospitals that are able to replace beds, the proposed policy change will permit them to replace the number of beds needed for acute and skilled nursing bed days. This should enable them to build enough capacity to continue to provide the transitional and restorative care services their communities need.

The proposed policy would enable Critical Access Hospitals to replace more of their swing beds. This does not represent unnecessary duplication because only beds that were utilized in accordance with both the target occupancy rates in Policy AC-5 and the Medicare swing bed policy could be replaced. Enabling Critical Access Hospitals to replace swing beds used for both purposes will ensure quality and value by enabling their patients to continue to be cared for in the proper setting, and will improve access by permitting replacement hospitals to be built to the size needed to provide a similar level of services.

PROPOSED POLICY AC-5:

Proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to utilization targets found below. In determining utilization of acute care beds, only ~~acute care bed~~ days of care provided in acute care beds and Medicare swing beds located in Critical Access Hospitals shall be counted. Any hospital proposing replacement of acute care beds must clearly demonstrate the need for maintaining the acute care and Medicare swing bed capacity proposed within the application.

Average Daily Census	Target Occupancy of Licensed Beds
1-99	66.7%
100-200	71.4%
Greater than 200	75.2%

Attachment:

* Calculation - Hypothetical Swing Bed Hospital Replacement

SMFP Policy	Number of Swing Beds	Avg. Census – Acute Swing days	Avg. Census – Nursing Care Swing days	SMFP Target occupancy	New Licensed Beds Needed
Current AC-5	25	10	5	66.7%	10/ .667 = 15
Proposed AC-5	25	10	5	66.7%	15/ .667 = 22

CMS Designation: Critical Access Hospital: *A facility that meets the following criteria may be designated by CMS as a CAH:*

- *Is located in a State that has established with CMS a Medicare rural hospital flexibility program; and*
- *Has been designated by the State as a CAH; and*
- *Is currently participating in Medicare as a rural public, non-profit or for-profit hospital; or was a participating hospital that ceased operation during the 10-year period from November 29, 1989 to November 29, 1999; or is a health clinic or health center that was downsized from a hospital; and*
- *Is located in a rural area or is treated as rural; and*
- *Is located more than a 35-mile drive from any other hospital or CAH (in mountainous terrain or in areas with only secondary roads available, the mileage criterion is 15 miles); and*
- *Maintains no more than 25 inpatient beds; and*
- *Maintains an annual average length of stay of 96 hours per patient for acute inpatient care; and*
- *Complies with all CAH Conditions of Participation, including the requirement to make available 24-hour emergency care services 7 days per week.*
  http://www.cms.hhs.gov/Certificationandcomplianc/04_CAHs.asp

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CURRENT POLICY AC-5: REPLACEMENT OF ACUTE CARE BED CAPACITY

Proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to utilization targets found below. In determining utilization of acute care beds, only acute care bed "days of care" shall be counted. Any hospital proposing replacement of acute care beds must clearly demonstrate the need of maintaining the acute care bed capacity proposed within the application.

Average Daily Census	**Target Occupancy of Licensed Beds**

1-99	66.7%
100-200	71.4%
Greater than 200	75.2%