

December 12, 2005

The Honorable Bill Frist
Majority Leader
United States Senate
Washington, DC 20510

The Honorable J. Dennis Hastert
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Minority Leader
House of Representatives
Washington, DC 20515

**RE: Adopt Section 6103 of the Senate Budget Reconciliation Bill
Regarding the 75% Rule under Medicare**

Dear Senate and House Leadership:

On behalf of the undersigned disability-related national organizations, we are writing to strongly urge your adoption of Section 6103 of the Senate bill, S.1932, the “Deficit Reduction Omnibus Reconciliation Act of 2005,” in the final conference report.

This critical provision would prevent serious harm to people with disabilities and chronic illnesses who are being denied access to medically necessary inpatient medical rehabilitation services as a result of the “75% Rule.”

If the 75% Rule is fully implemented as it currently is being phased in by the Centers for Medicare and Medicaid Services (CMS), it will require inpatient rehabilitation facilities (“IRFs”) to have 75% of their patients fall into one of 13 diagnostic categories, such as stroke, spinal cord injury, or traumatic brain injury. IRFs not meeting these criteria will lose their eligibility under Medicare as a rehabilitation hospital or unit and, thus, no longer be able to continue providing that same level of intensive rehabilitative care.

The 75% Rule was originally intended to help classify which hospitals and units focus on rehabilitation rather than acute care, but the current policy is having, and will continue to have if left in place, a serious impact on access to care. ***The result is a denial of access to inpatient hospital rehabilitation in favor of care provided in cheaper, less-intensive and often inappropriate settings like nursing homes.***

People with disabilities and chronic conditions deserve the most appropriate care that will improve function and restore independence as expeditiously as possible. Care provided in less intensive settings such as nursing homes often results in far longer inpatient stays and creates the possibility that the person may never become fully independent. Unlike nursing homes, almost 76 percent of people discharged from a rehabilitation hospital

return to the community. In other words, inpatient rehabilitation patients are unlikely to be institutionalized.

Specifically, the Senate provision would hold implementation of the “75% Rule” at the 50% threshold level for two years through June 30, 2007. Those rehabilitation hospitals that failed to meet the 50% compliance threshold would be given an additional six months to bring themselves into compliance. The provision also requires a study to identify and review the types of patients, medical conditions and rehabilitation providers that are unable to meet CMS’ qualifications. Finally, the provision establishes a Rehabilitation Advisory Council to provide advice and recommendations to the HHS Secretary on Medicare coverage of rehabilitation services.

Large numbers of Medicare beneficiaries are already being denied access to inpatient hospital rehabilitation services. Approximately 40,000 people with disabilities and chronic illnesses are estimated to have been denied access to inpatient hospital rehabilitation in FY 2005. CMS has acknowledged that the impact of the 75% Rule in the initial year of phase-in was greater than the agency predicted. Industry data suggests that the impact was 22 times greater than CMS estimated. Already, 16,000 fewer patients have been treated in IRFs in the first quarter of FY 2006 and it is estimated that a total of 64,000 patients will be denied access to inpatient hospital rehabilitation in this second year of phase-in. The Medicare Payment Advisory Commission (MedPAC) has also acknowledged the acute effect of the 75% Rule, releasing a report on December 8, 2005 that estimates a 14% decline in caseloads at IRFs in 2005. Despite this alarming data, there is no indication that CMS intends to rectify this situation and, therefore, legislative action is necessary.

If the Senate provision is not included in the final bill, the 75% Rule will ration inpatient hospital rehabilitation for people with disabilities and chronic conditions. Under the 75% Rule, rehabilitation facilities’ hands are tied—they will not be able to accept many patients who are clearly in need of an inpatient rehabilitation level of care but do not qualify under the 13 conditions of the 75% Rule.

Thank you for your consideration of our request as the reconciliation process moves forward. We understand that you have difficult choices ahead, but strongly urge you to preserve access to inpatient hospital rehabilitation services that have the potential to dramatically increase function and independence of people with disabilities and chronic illnesses.

Please do not hesitate to contact Peter Thomas (202) 466-6550 with any questions or concerns.

Sincerely,

American Academy of Neurology
American Academy of Physical Medicine and Rehabilitation
American Association of People with Disabilities

American Congress of Rehabilitation Medicine
American Dance Therapy Association
American Medical Rehabilitation Providers Association
American Music Therapy Association
American Occupational Therapy Association
American Physical Therapy Association
American Psychological Association
American Therapeutic Recreation Association
Association of Academic Physiatrists
Association of Assistive Technology Act Programs
Association of University Centers on Disabilities
Brain Injury Association of America
Christopher Reeve Foundation
Easter Seals
Epilepsy Foundation
Goodwill Industries
National Association for the Advancement of Orthotics & Prosthetics
National Association of Councils on Developmental Disabilities
National Association of Social Workers
National Council on Independent Living
National Disability Rights Network
National Spinal Cord Injury Association
NISH
Paralyzed Veterans of America
Rehabilitation Engineering and Assistive Technology Society of North America
Research Institute for Independent Living
The Arc of the United States
United Cerebral Palsy
United Spinal Association

Cc:

The Honorable Judd Gregg
The Honorable Kent Conrad
The Honorable Jim Nussle
The Honorable John Spratt

The Honorable Charles Grassley
The Honorable Max Baucus
The Honorable William Thomas
The Honorable Charles Rangel

The Honorable Joe Barton
The Honorable John Dingell

All Members of Congress