American Hospital Association

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Kevin Neyland
Deputy Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: DOD–2007–HA–0048, TRICARE; Outpatient Hospital Prospective Payment System (Vol. 73, No. 63), April 1, 2008.

Dear Mr. Neyland:

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our 38,000 individual members, the American Hospital Association (AHA) would like to thank you for taking time to meet with us on Friday, October 24. I am writing today to reinforce the concerns we raised at that meeting regarding the TRICARE outpatient prospective payment system (PPS) proposed rule and its potential impact on hospitals and health care systems that serve the TRICARE population.

America's community hospitals are responding to the growing needs of our nation's military servicemen and women and their families, especially as they restart and rebuild their lives following service in combat. We urge the Office of Management and Budget (OMB) to require the Department of Defense (DoD) to withdraw the proposed rule and re-issue a new proposed rule with a more substantial transition plan to ensure continued access to outpatient services for TRICARE beneficiaries.

The *National Defense Authorization Act for Fiscal Year 2002* requires that TRICARE payment methods for outpatient hospital care be determined, to the extent practicable, in accordance with the outpatient reimbursement rules used by Medicare. However, we believe that the proposed rule does not appropriately account for the significant reduction in payment to hospitals, threatening their ability to furnish needed health care services to TRICARE's beneficiaries. TRICARE proposes to adopt virtually the same Medicare payment rules that force hospitals to incur, on average, large losses every time they treat seniors. According to the Medicare Payment Advisory Commission, an independent panel that advises Congress on Medicare issues, hospital operating margins for Medicare outpatient services were *negative* 11 percent in 2006.

As we noted during our meeting, we are concerned about the vagueness and ambiguity in the proposed rule's transition to align TRICARE payments with Medicare's outpatient PPS, special exemptions for certain hospitals and services, and the lack of an adequate impact analysis. While we do not dispute the direction from Congress, a well-constructed plan and an adequate transition are necessary.

The proposed rule contains an inadequate and flawed impact assessment. This assessment lacks transparency, relies on a flawed logic and is clearly inaccurate in concluding that the net impact of the proposed rule is $81 million – less than the $100 million "major rule" threshold that triggers a detailed economic impact analysis and the consideration of additional alternatives that would mitigate the impact of the rule on hospitals. DoD's impact assessment, based only on 2006 TRICARE claims data, reduces the gross cost savings of the rule from $231 million to a net cost savings of $81 million for the first 12 months of implementation – a $150 million difference. This enormous reduction is largely unaccounted for. As a result, we recommend that OMB require a new proposed rule with an appropriate regulatory impact analysis.

The transition proposal contained in the proposed rule is insufficient. A meaningful transition that will mitigate the significant financial impact on hospitals and health care systems and ensure access to outpatient hospital services for our nation's active-duty military service members, retirees and their families is needed. DoD proposes two transitional options to adjust payments, both of which are vague and limited with respect to the scope of services covered, hospitals affected, duration and impact. The rule does not describe how or who these transitions will help. And neither option comes close to matching the level or effectiveness of hold-harmless payments that accompanied the gradual transition to the Medicare outpatient PPS, which TRICARE claims to emulate, and which were designed to mitigate the substantial payment losses hospitals experienced. Even eight years after implementation of Medicare's outpatient PPS, many hospitals across the country are held harmless from the significant payment reductions enacted under the outpatient PPS to ensure patients' access to needed services.

A longer and more robust transition plan is needed for all TRICARE network hospitals. DoD implemented a transition for physicians – an annual 15 percent stop-loss to bring TRICARE physician payments in line with Medicare payments – that far exceeds what it proposes for outpatient hospital services. At a minimum, an identical 15 percent annual payment reduction limit for all services should be used for all network hospitals and remain in place until TRICARE rates are in line with Medicare rates. This will help assure that covered beneficiaries under TRICARE retain adequate access to hospital outpatient services. In addition, the rule should provide DoD with additional flexibility to do more to ease the transition, or exempt those hospitals with a disproportionate share of TRICARE patients.

Thank you again for meeting with us and for your serious consideration of our concerns and recommendations on this topic. If you have any questions, please feel free to contact me; Don May, vice president for policy, at (202) 626 2356 or dmay@aha.org; or Roslyne Schulman, senior associate director for policy, at (202) 626-2273 or rschulman@aha.org.

Sincerely,

Rick Pollack
Executive Vice President