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THE VOICE OF BRAIN INJURY, HELP, HOPE AND HEALING

May 15, 2009

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

RE: Response to Delivery System Recommendations

Dear Chairman Baucus and Ranking Member Grassley:

The Brain Injury Association of America (BIAA), is pleased to submit written comments on the Senate Finance Committee's set of recommendations regarding health care delivery system reform contained in the document *Transforming the Health Care Delivery System: Proposals to Improve Patient Care and Reduce Health Care Costs* (April 29, 2009). In summary, BIAA supports several recommendations with respect to coordination of chronic conditions but is strongly opposed to the bundling of post-acute care as it applies to persons with brain injury.

The Brain Injury Association of America (BIAA) is the leading national organization serving and representing individuals, families and professionals who are touched by a life-altering, often devastating, traumatic brain injury (TBI). Together with its network of more than 40 chartered state affiliates, as well as hundreds of local chapters and support groups across the country, the BIAA provides information, education and support to assist the 1.4 million Americans who sustain a traumatic brain injury each year.

Traumatic brain injury is an established and growing public health problem across both military and civilian populations. As set forth in a recent paper prepared by BIAA [*Covering the Treatment Continuum for Persons with Brain Injury As Part of National Health Care Reform* http://www.biausa.org/elements/policy/2009/position_paper_treatment_continuum_and_reform_042309.pdf], the evidence overwhelmingly demonstrates that providing post-acute rehabilitation and disease management at the appropriate time and of the appropriate scope, duration and intensity saves millions of dollars in both immediate and future health care costs. Early appropriate treatment costs less than half that of delayed treatment, rates of recovery are more than two times faster and lifetime cost of care is more than twice that of delayed treatment. Simply put, early appropriate treatment saves money.

Accordingly, BIAA believes that national health reform should address the unique health care needs of individuals with brain injury by recognizing that brain injury is the start of a lifelong disease process requiring a full continuum of medically necessary treatment, including rehabilitation, furnished by accredited programs in the most integrated appropriate treatment setting as determined in accordance with the choices and aspirations of the patient and family in concert with an interdisciplinary team of qualified and specialized clinicians.

Set out below are our responses to specific recommendations presented in the Finance Committee document of particular significance to persons sustaining brain injuries.

1. Coordination of Chronic Conditions

There are several provisions in the delivery system reform recommendations that BIAA supports and believes will lead to better coordination, improved quality of care, and ultimately, reduced costs in treating Medicare beneficiaries sustaining brain injuries and other beneficiaries with ongoing, complex and chronic health care needs. We support the recommendations to:

- Allow qualified groups of Medicare providers, such as Accountable Care Organizations, who meet quality thresholds to share in the cost-savings they achieve for Medicare.
- Establish at CMS a center to test and disseminate payment innovations for coordinating the care of chronically ill Medicare beneficiaries.
- Establish a Medicare Rapid Learning Network for the purpose of smaller-scale evaluation of emerging evidence-based care management models.
- Create a new benefit to reimburse for certain care management activities performed by non-physician professionals (such as nurse practitioners) hired or contracted by physicians.
- Implement mandatory quality measure reporting programs for inpatient rehabilitation facilities and long-term care hospitals.

Each of these provisions could significantly enhance the treatment and rehabilitation of people with brain injury who are covered by Medicare. We encourage the Committee to move forward with these recommendations and to explicitly list acquired and traumatic brain injury as chronic conditions to which these programs would apply.

2. Post-Acute Care Bundling

BIAA strongly supports national health care reform that will improve the quality, effectiveness, and efficiency of patient care. BIAA also understands that changes to entitlement programs and other reforms may be necessary to offset the cost of a significant improvement in health care access. One such cost-saving strategy is “post-acute care (“PAC”) bundling.” PAC bundling would restructure the current Medicare payment system to consolidate payments for acute care

hospitalization with payments to cover a 30-day period of post-acute care. The bundled post-acute payment system involves a single payment to cover—what amounts to—the average cost to Medicare of PAC services provided in inpatient rehabilitation facilities, long-term care hospitals, skilled nursing facilities, home health care agencies, and hospital outpatient services for treatment of the same condition.

BIAA strongly believes that the bundling proposal included in the Finance Committee paper will not achieve the stated objectives of increasing quality, effectiveness, and efficiency regarding persons sustaining brain injuries. Because the payment for each patient is proposed to be an average of five very different levels of intensity of care, there will be a distinct financial disincentive for the acute care hospital to refer patients to higher intensity (and, therefore, higher cost) settings of post-acute care. In this instance, the quality of care may be severely compromised, improvements in functional status during the post-acute care stay will likely decrease, and Medicare beneficiaries sustaining brain injuries will be ill-equipped to return to their homes, communities or pre-injury lives. This, in turn, will lead to significant costs to the government and exact an unnecessary human toll on both individuals with brain injury and their families.

More specifically, the proposal will create a strong incentive for hospitals to bring all settings of post-acute care under their own roof, consolidate their referral sources, and contract with post-acute providers that will furnish the least costly services—not necessarily the most appropriate services—to the hospital. Proponents may view this as increased "efficiency" while others see a race to the bottom in terms of quality. It is likely that hospitals will be reluctant to refer complex patients, such as those with brain injuries, outside of the control of the hospital network, even though well-developed and evidence-based specialty programs unaffiliated with the hospital would better serve patients.

Bundling will signal a return to the days of the acute medical model being used to treat people with disabilities and chronic illnesses, where hospitals were the locus of care. BIAA strongly questions whether acute care hospitals have the expertise and interest in truly providing the full treatment continuum of medically necessary and appropriate services (including rehabilitation) for persons sustaining a brain injury. Hospitals should be paid for what they do best i.e., provide emergency and other medical interventions to stabilize the patient's condition and arrest disease progression in the early minutes and hours after a brain injury.

The assumption of the proposal's proponents is that the acute care hospital receiving the payment will establish a mechanism to channel cases to the appropriate post-acute provider to meet the complexities of the case, thus removing that determination from the patient, patient's family, and the attending physician and other health professionals advising the patient at discharge. This elimination of physician and clinical judgment, coupled with the lack of patient choice, is a serious change in the motivation of the decision-makers as to the course of post-acute care received by the beneficiary in need of these services.

Under the bundling proposal, the financial disincentive for the acute care hospital to refer patients to higher intensity (and therefore higher cost in the short run) settings of post-acute care will severely compromise the quality of care provided and stands in opposition to existing standards of care following brain injury. As a result, Medicare beneficiaries will be less able to return to their homes and return to their lives pre-injury. This, in turn, could lead to significant long-term cost to the government.

Medical treatment following brain injury is conducted across a variety of settings where patients are logically and predictably transferred from one level of care to another, that is, from a trauma center to an inpatient rehabilitation hospital to one of a variety of non-hospital based rehabilitation settings, as indicated by their medical status. It is not appropriate to restrict progression from one level of treatment to another as an unintended consequence of attempting to reduce preventable hospital readmissions as is the case for "bundling" provisions. Transfer from one level of treatment to another following brain injury must be enabled to avoid inappropriate treatment or overtreatment.

BIAA urges Congress to reject any proposal that would bundle post-acute care services and/or assign the acute care hospital as the care coordinator. If post-acute bundling does move forward, we urge Congress to:

- Require the Centers for Medicare and Medicaid Services (CMS) to rigorously pilot test post-acute bundling to ensure that beneficiaries are not underserved.
- Limit post-acute bundling to certain acute care diagnoses that do not require extensive or complex post-acute rehabilitative care for the patient population at issue. Those sustaining brain injuries would be exempt.
- Require strong consumer protections and validated measurement tools to ensure that beneficiaries with brain injury and other disabilities and chronic illnesses receive the intensity of rehabilitation and other post-acute services they need to maximize their functional status, return to the community setting after illness or injury, and live as independently as possible.
- Exempt from the bundled payment specialty, low prevalence, highly customized or relatively expensive treatments (e.g., medically necessary and appropriate treatment provided in specialty rehabilitation hospitals or residential/transitional rehabilitation facilities for persons sustaining a brain injury) so that hospitals do not simply delay these treatments until the 30-day post-acute care time period lapses.

In summary, BIAA is strongly supportive of health care reform and understands that a review of entitlement programs is a necessary component to this reform. While significant savings can be achieved through better coordination of chronic disease, capitating payments to providers and creating disincentives for the provision of rehabilitation at a sufficient level of intensity—amount, duration and scope of services—will only underserve patients and lead to more expensive ongoing medical needs throughout the life of the individual. Rehabilitation is the key

to reducing costs in the long term for the treatment of traumatic brain injury patients, as well as many other patients with chronic illnesses and conditions.

Thank you for your consideration of our views. If you have any questions, please contact Sarah D’Orsie, BIAA’s Director of Government Affairs, at 703-761-0750 ext. 637 or via e-mail to sdorsie@biausa.org.

Sincerely,

Susan H. Connors
President/CEO