HCAM Opposed to Swing Bed Expansion

House Bills 4441, 4442 and 4443 were introduced this week to expand the use of hospital swing beds. The Health Care Association of Michigan and the Michigan County Medical Care Facilities Council have strong concerns with this package as introduced and look forward to discussing these issues as we move forward.

More than 30 years ago, the Short Term Care Nursing Program (commonly referred to as “swing beds”) was established when census in many nursing facilities ran at capacity. Patients ready for discharge could temporarily remain at the hospital until a bed became available in a nearby nursing facility. This policy allowed care to continue only until transfer to the more appropriate nursing facility could be accomplished.

This legislation would repeal state regulations limiting the use of swing beds and revert to federal guidelines allowing up to 100 days of care in a hospital swing bed. Support for adoption of the federal swing bed guidelines, a liberalizing of public policy, is a vote for increasing the cost of post acute care, while negatively impacting nursing facility providers. Over the past several years, bed capacity in skilled nursing and rehab facilities has right sized and today’s bed utilization is very different. Currently, skilled nursing and rehab facility occupancy is stable at 86 percent, therefore access and choice are not a challenge.

Allowing for expanded use of hospital swing beds will significantly increase health care costs paid by taxpayers. Critical Access Hospitals (CAH) with swing beds are paid at 101 percent of allowable cost. This reimbursement is significantly higher than what a nursing facility would be paid for the same service. For example, Mackinac Straits Hospital 2009-2010 cost report shows an average swing bed cost of $1,579 compared to an average skilled nursing facility rate of $437 per day.

There are 31 MI hospitals with swing beds. A liberalization of current policy may encourage more hospitals to participate in the program. Expanded use of hospital swing beds will increase health care cost and further erode census at up-to 70 nursing facilities throughout the state.

And while most hospitals have honored the intent and letter of the swing bed policy, in recent years some rural and CAH’s have taken liberty to expand swing bed utilization to their own financial benefit. In 2007, Michigan Department of Community Health (MDCH) sited Schoolcraft Memorial Hospital (SMH) for retaining patients in swing beds for more than 5 days even though space was available for them in the adjoining Schoolcraft County Medical Care Facility (SCMCF.) The hospital repeatedly failed to comply, costing the facility hundreds of thousands of dollars in revenue. Following the department citation, SMH then initiated a federal lawsuit against the MDCH seeking a declaration from the court that the Medicare transfer restriction regulations “preempted” Michigan’s 5-day rule. The Federal Court action was assigned to Judge Robert Jonker. Judge Jonker ruled against the hospital, finding there was not a conflict between Michigan law and the transfer regulations, noting as follows:
There is no direct conflict between the laws. In fact, hospitals other than SMH represent that they are able to comply with both. The record in this action suggests that SMH is endeavoring to contrive an irreconcilable conflict so that it can (1) continue to enjoy the considerable revenue stream that it has received from using swing-beds in violation of the five-day rule and (2) then use that revenue stream to finance a new hospital construction project even though there are long-term care beds available at much lower average cost to the taxpayer in the immediately adjacent and physically connected SCMCF. Indeed, the SCMCF, which is controlled by the same county that controls SMH, has had available beds since November 2005. Under these circumstances, federal preemption does not apply. To the contrary, preempting the state regulation on these facts would have the perverse effect of preventing use in a rural county of available, convenient, and low-cost-nursing-home beds in favor of higher-cost swing beds. Such a result would turn the purpose of the swing bed program on its head.

Lastly, some have characterized this as an issue of patient choice. There are more than 70 nursing facilities in close proximity to the 31 hospitals authorized for swing beds. These facilities are within an average of 7 miles of the hospital. In the vast majority of cases, patient choice and distance of travel should not be an issue in finding an appropriate nursing facility for post acute care. Further, claims of creating competition through this change in policy are unfounded. Much of Michigan’s health care system operates under the Certificate of Need Program which is intended to balance cost, quality, and access issues, and ensure that only needed services and facilities are developed in Michigan. Today’s experience of skilled nursing utilization would lead us to conclude there is no valid reason to maintain swing beds. Considering predictions of increasing demand for services and shrinking health care dollars it is only prudent to maintain Michigan’s current swing bed policy. There is no value in deregulating to increase cost. True deregulation would be to end the swing bed classification and save tax payer dollars, action taken in at least six states.