June 8, 2015

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Burwell:

The "Two Midnights" rule, a hospital inpatient admission policy that the Centers for Medicare & Medicaid Services (CMS) introduced and implemented through the FY 2014 Inpatient Prospective Payment System (IPPS) regulation on October 1, 2013, has had significant unintended negative consequences that burden Medicare beneficiaries and taxpayers.

We continue to remain extremely concerned about this rule, which effectively second guesses the medical judgment of physicians and potentially adversely impacts patients and health outcomes. Specifically, utilizing a strict time-based framework as a means to classify and treat patients erodes a provider's ability to improve health outcomes through personalized, evidence-based clinical care. This sentiment is shared by stakeholders broadly, including patients, doctors, hospitals, and most recently the independent federal government advisory body, Medicare Payment Advisory Commission (MedPAC), which voted unanimously on a draft recommendation to withdraw the "Two Midnights" rule because it detracts from admission criteria that depend upon clinical judgment.

While CMS originally designed this simple administrative fix to curb the overuse of patient observation status and clarify hospital reimbursement policies, evidence suggests the "Two Midnights" rule has resulted in unanticipated patient out-of-pocket costs and uneven clinical experiences, and has threatened the quality of patient care by weakening clinical review standards. Because stakeholders across the industry oppose the "Two Midnights" rule, given its significant and harmful unintended consequences, CMS should instead rescind the "Two Midnights" rule via the FY 2016 IPPS rulemaking process.

In its place, we respectfully urge CMS to allow impacted stakeholders to identify alternative policy ideas that 1) restore clinical judgment to the hospital admission process, 2) preserve consistent approaches to clinical and utilization review processes, and 3) ensure transparency regarding beneficiary financial accountability.

Sincerely,

American Medical Association
American Medical Group Association
Association of American Medical Colleges
Mercy Health
National Caucus and Center on Black Aging
National Coalition on Health Care
National Hispanic Council on Aging
National Hispanic Medical Association
Population Health Alliance