June 27, 2014

Ms. Marilyn Tavenner, Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

Submitted Electronically to SuggestedExceptions@cms.hhs.gov

Dear Administrator Tavenner:

On behalf of the American Medical Group Association (AMGA), we appreciate the opportunity to provide comments on Suggested Exceptions to the 2-Midnight Benchmark in the current Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Fiscal Year 2015 Rates Proposed Rule. AMGA represents some of the country's largest, most prestigious integrated health care delivery systems and multi-specialty medical groups. The nearly 130,000 physicians practicing within AMGA member medical groups deliver health care services to more than 130 million patients in 49 states. AMGA members have told us that the current policy has proven to be burdensome and costly to providers and beneficiaries, and has shifted resources away from improving patient care. We therefore have a strong interest in the development of a workable and easily understood short-stay policy in the hospital setting that works for both providers and the beneficiaries they serve, while utilizing Medicare funds appropriately.

Two Midnight Rule – Comments

First and foremost, working within the 2-Midnight Benchmark and the related "observation status" category have unnecessarily complicated the clinical decision-making process for providers by shifting attention to the expected length of time a patient spends in an acute care bed. Providers should have the ability to provide the right care at the right time for each patient, and work within reasonable rules. The clinical status of patients is quite variable, with some patients worsening, while others respond more quickly to treatment. Many of our members have expressed significant concern about the administrative burden placed on providers to implement the observation status, in addition to the subsequent audit of these cases by Recovery Audit Contractors (RACs). Such audits add an additional layer of administrative and financial burden, diverting resources away from patient care. Moreover, audit determinations made by the RACs on observation status are often successfully appealed, creating the need to devote yet even more resources to these endeavors for both the health care systems involved and the Centers for Medicare and Medicaid Services (CMS).

We have also heard from our members with hospitals that that many beneficiaries are becoming increasingly concerned about the current policy and the additional costs they will accrue for their

hospital care when they are placed in observation status. This concern is shared by beneficiaries who are transitioning to care in a Skilled Nursing Facility (SNF). If these patients have been admitted under observation status, they will not qualify for their Medicare benefit in a SNF, which requires a prior three-night stay in an acute-care hospital. This situation places an enormous financial burden on affected beneficiaries.

While our members appreciate the temporary reprieve from enforcement of the 2-Midnight Benchmark in the Protecting Access of Medicare Act of 2014, they are also very interested in a commonsense resolution to this problem along the lines of what Medicare Payment Advisory Commission (MedPAC), recently suggested in comments before Congress. MedPAC is considering a new definition of short-stay admissions that would clearly identify when a patient is an inpatient, and would pay hospitals appropriately through the existing Inpatient Prospective Payment System (IPPS).

Our members recommend the complete elimination of the observation payment category in favor of a new reimbursement category called "Inpatient Short Stay." This new category would be used for patients who stay for less than 48 hours, with the exception of cases resulting in death, departure against medical advice, additional unforeseen circumstances, and cases categorized on the Medicare "inpatient only" list. We appreciate that CMS has clarified through sub-regulatory guidance that their current "unforeseen circumstances" category is not all-inclusive and is open to receiving additional input.

This new category could utilize the existing inpatient Diagnostic Related Group (DRG) structure to place a patient into a classification. A patient who stays longer than 48 hours would be categorized as a regular inpatient stay and the full DRG reimbursement rate would apply. The new category should also reflect that the first day of any hospital stay, long or short, will always be the most resource intensive.

Once again, we thank you for the opportunity to provide input on this important policy issue.

Sincerely,

Donald W. Fisher, Ph.D.
President and CEO
American Medical Group Association