



November 8, 2013

Marilyn B. Tavenner  
Administrator  
U.S. Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW, Room 445-G  
Washington, DC 20201

***RE: Inpatient admission and review criteria set forth in the FY 2014 Hospital Inpatient Prospective Payment System final rule***

Dear Administrator Tavenner:

On behalf of our members, who include the vast majority of health care providers seeking to implement the inpatient admission and review criteria (the two-midnight policy) finalized by the Centers for Medicare & Medicaid Services (CMS) in the fiscal year 2014 Hospital Inpatient Prospective Payment System (IPPS) final rule, the American Hospital Association (AHA) and the American Medical Association (AMA) appreciate the opportunity to share with you our concerns with the two-midnight policy. **Specifically, we urge the agency to delay enforcement of the two-midnight policy until October 1, 2014, and to convene a meeting with all affected stakeholders to discuss workable, comprehensive solutions to the rise in observation care.**

**The fundamentally flawed, overly complicated two-midnight policy does not provide the clarity needed for consistent decision-making by either providers or reviewers.** Unfortunately, CMS has made clear that, in most cases, it will no longer consider inpatient stays which are expected to last less than two midnights appropriate for payment under Medicare Part A, regardless of whether a physician determines that intensive services are required based on the patient's complex signs and symptoms. This undermines medical judgment and disregards the level of care actually needed to safely treat a patient. **CMS has also failed to educate beneficiaries on this policy, meaning that hospitals and physicians will be in the position of explaining a significant coverage limitation at a patient's most vulnerable time.**

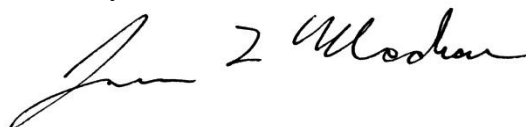
Moreover, it has been impossible for hospitals and physicians to come into compliance with the two-midnight policy given the two-month time period between the release of the final rule and the policy's effective date. Even with the partial delay in enforcement through March 31, 2014, there is not enough time for hospitals and physicians to adjust. Providers need additional time to reevaluate and potentially change many internal policies, update existing electronic medical records systems, and alter work flow processes to ensure compliance with the two-midnight policy. **In particular, physicians will need extensive education on the two-midnight policy and time to adapt to its order and certification requirements, many of which are still unclear.**

Furthermore, many questions about the two-midnight policy remain unanswered. The October 1, 2013 implementation date has now passed, yet the agency has issued only minimal guidance – most of which lacks clarity and only raises new questions for both hospitals and physicians. To date, only minimal guidance and instructions have been issued, despite the agency's statements that such additional guidance would be forthcoming. We cannot support implementation of the two-midnight policy under these circumstances and without clear, detailed, and precisely written guidance for hospitals, physicians, and Medicare review contractors.

**We believe that the only workable approach is to delay enforcement of the two-midnight policy until October 1, 2014. Additionally, CMS should convene a meeting with affected stakeholders to develop alternate policy solutions that would address the trend of increased observation care and the related issues that this trend has caused for hospitals, physicians, and patients.** The goal would be to develop workable solutions – including the possibility of a long-term payment solution – that will both address this trend and adequately provide for the intense, inpatient-level services currently provided by hospitals to Medicare beneficiaries that are reasonable and necessary but do not appear on the inpatient-only list and are not expected to span two midnights.

The AHA and AMA appreciate the opportunity to comment on this matter and to offer our comments and insights to improve the operation, fairness, and accuracy of the Medicare program for its beneficiaries. If you have any questions concerning our comments, please feel free to contact Sharon McIlrath, Assistant Director, Federal Affairs, AMA at 202-789-7417 or [sharon.mcilrath@ama-assn.org](mailto:sharon.mcilrath@ama-assn.org) or Priya Bathija, Senior Associate Director, AHA at 202-626-2678 or [pbathija@aha.org](mailto:pbathija@aha.org).

Sincerely,



James L. Madara, MD  
American Medical Association  
Executive Vice President, CEO



Rich Umbdenstock  
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