

July 30, 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:

On behalf of Medicare beneficiaries nationwide, we write to express our appreciation for CMS's recent efforts to address the fundamentally flawed "Two Midnights" policy by restoring a qualified provider's (physician, advanced practice registered nurse) ability to admit patients into the hospital that do not require a two-midnight stay, as proposed in the recent CMS Outpatient Prospective Payment System rule. The "Two Midnights" rule, however, remains unchanged for stays lasting more than two midnights and we respectfully ask CMS to use its authority to eliminate the standard entirely for hospital admissions.

Medicare beneficiaries have experienced first-hand the downstream negative implications of this flawed rule, particularly the impact of how a hospital "stay" is classified – outpatient or inpatient—on a beneficiary's pocket book. Moreover, because Medicare has separate payment systems for inpatient and outpatient claims, the "Two Midnights" rule has created a scenario in which two patients presenting at the hospital with the same symptoms receiving similar care could have significantly different health care experiences and cost-sharing obligations, solely on the basis of the time they walked into the hospital for care.

The nonpartisan Medicare Payment Advisory Commission (MedPAC) echoed these concerns for beneficiaries and recommended ending the "Two Midnights" policy in its recent report to Congress. Specifically, MedPAC concluded that the "Two Midnights" rule "may incentivize hospitals to lengthen stays beyond the two-midnight threshold," which could negatively impact beneficiaries and lead to overutilization.

Given these harmful unintended consequences for beneficiaries, as well as the widespread opposition to the policy across the health care sector, we respectfully urge CMS to 1) Finalize the proposed changes to the "Two Midnights" rule, and 2) Use its authority to eliminate the remaining time-based criterion for hospital admissions exceeding the two-midnight threshold, as each beneficiary deserves to be evaluated by a qualified provider's judgment and not an arbitrary time-based admission standard.

Sincerely,

American Association of Nurse Practitioners  
American Nurses Association  
International Council on Active Aging  
National Association of Hispanic Nurses  
National Hispanic Medical Association  
National Minority Quality Forum  
National Patient Advocate Foundation  
National Rural Health Association  
Palm Beach County Partnership for Aging  
Population Health Alliance  
The Latino Coalition  
Treasure Coast Advocates for Seniors