



# AMERICAN COLLEGE OF SURGEONS

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February 12, 2019

The Honorable Adrian Smith  
U. S. House of Representatives  
502 Cannon House Office Building  
Washington, DC 20515

The Honorable Terri Sewell  
U.S. House of Representatives  
2201 Rayburn House Office Building  
Washington, D.C. 20515

Dear Representatives Smith and Sewell:

On behalf of the more than 80,000 members of the American College of Surgeons, I write to express the College's support for the Critical Access Hospital Relief Act, H.R. 1041. This legislation would remove the 96-hour physician certification requirement as a condition of payment for inpatient critical access hospital (CAH) services under Medicare.

The CAH 96-hour rule creates a condition of payment requiring that a physician certify that a patient can reasonably be expected to be discharged or transferred within 96 hours. While this requirement has been in effect since 1997, it had not become a problem until 2013 when the Centers for Medicare Services (CMS) instituted its two-midnights rule for inpatient hospitalization, and its regulators noted that the 96-hour limit on CAH's had not been enforced. Many CAHs were completely unaware of the 96-hour rule's existence as CAHs must already meet a separate condition of participation, which requires that acute inpatient care provided to patients not exceed 96 hours per patient on an average annual basis.

To minimize the burden of physician certification requirements on CAHs, CMS finalized in its fiscal year 2018 Medicare Inpatient Prospective Payment System final rule a policy to make the 96-hour rule a low priority for medical record reviews occurring on or after October 1, 2017. Under this proposal, CMS will not require Quality Improvement Organizations (QIOs), Medicare Administrative Contractors (MACs), Supplemental Medical Review Contractors (SMRCs), and Recovery Audit Contractors (RACs) to conduct medical record reviews of the 96-hour certification requirement in the absence of evidence of potential fraud, waste, or abuse. While we appreciate CMS' engagement on this issue, the 96-hour rule still technically remains in effect and a statutory fix is needed to fully repeal this certification requirement. This requirement has imposed significant burdens on the surgical

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community, whose members extend essential surgical care to Medicare's rural beneficiaries.

The ACS believes that rural patients should be allowed to seek care in a familiar setting closer to where they live. If this care can be provided safely and appropriately in the CAH setting without exceeding the 96-hour average condition of participation, then patients, in consultation with their physicians, should be able to choose this setting if it is where they are most comfortable. The Critical Access Hospital Relief Act would address this problem by removing the separate and previously unenforced condition of payment.

Again, we applaud your efforts to address this issue and are pleased to support the Critical Access Hospital Relief Act. We look forward to working with you and your colleagues to enact this important legislation.

Sincerely,

David B. Hoyt, MD, FACS  
Executive Director, American College of Surgeons

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