Congress of the United States
Washington, DC 20515

September 25, 2013

Honorable Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Administrator Tavenner,

We are writing today to express our deep concern with the proposed 2014 Home Health Prospective Payment System (HHPPS) rule and its proposed implementation of the rebasing provision in Section 3131 of the Affordable Care Act (ACA).

Home health is a critical service that allows patients to be treated in a cost-effective manner in the environment they prefer – their home. Home health patients are among the most vulnerable in the Medicare program, being older, sicker and poorer than the general Medicare population. As a result, access to home healthcare services is essential, as it enables vulnerable seniors to receive the medical treatment they need in the cost-effective setting that they prefer most.

Therefore we are concerned about the draft HHPPS rule's proposal to cut Medicare home health funding by a total of 14 percent over 4 years (3.5% reduction each year in 2014-2017). It has been projected that if the proposed rule is finalized in its current form, Medicare reimbursement for home health services will be driven below cost in every State by 2017. As a result, we are concerned that the proposed rule would have a direct impact on access for millions of seniors, many of whom reside in rural and underserved communities. A significant amount of this care in rural and underserved areas is provided by thousands of small businesses that would be most at risk of going out of business under the proposed rule.

We firmly believe in ensuring that Medicare payments are based on the best available data. However, we are concerned that the proposed rule may fall short of this goal due to its reliance on incomplete data. Consequently we believe that the analysis results in the under-counting of home health agencies' costs, an over-estimation of their operating margins and, as a result, an inappropriately high rebasing adjustment.

For example, the proposed rule appears to under-estimate agencies' actual operating costs by excluding costs that are routinely borne by home health providers. Home health agencies are increasingly utilizing telehealth technologies, but their cost is excluded from the proposed rule's calculations of the cost per episode of care. Similarly, costs that agencies must bear as a result of taxes and regulations, such as regulatory compliance and the payment of federal, state and local taxes, also appear to be excluded. Finally, the overhead costs of hospital-based home health

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agencies do not seem to be adequately factored into the rule's calculations, since those agencies face particularly deep losses as a result of this rule.

The Medicare home health benefit has experienced a series of funding reductions since 2009 that are reducing reimbursement by more than 20 percent over a 10-year period. In order to ensure the sustainability of any additional cuts, it is both critical and required under statute and Executive Orders that the impact of current law reductions be fully taken into account in a multi-year analysis if the payment cuts are to apply over several years

President Obama's Executive Order 13563, "Improving Regulation and Regulatory Review", directs agencies to use the "best available techniques to quantify present and future benefits and costs as accurately as possible." The draft HHPPS rule provides only a partial impact assessment for only one year (2014), even though the ACA directs that this provision be implemented over four years (2014-2017). At the same time, the draft rule fails to take into account revenue reductions that will impact agencies in the years to come, such as productivity adjustments and sequestration.

As a result of these factors, we respectfully request the Agency's analysis of the impact of this rule on beneficiaries, the national delivery system, each state, and small businesses be performed in each of the four years in which the rebasing adjustment is to take effect. We also ask that CMS utilize a more current and complete data set to fully account for the operating costs that are routinely borne by home health providers.

In closing, we wish to express our concern that – if finalized in its current form – the proposed rule is projected to drive Medicare reimbursement below costs in all states across the country and have a significant impact on some of the most vulnerable Medicare seniors and the communities in which they live.

We are committed to the goal of ensuring fair and accurate payment for Medicare services, which is why we urge you to include all routinely-borne operating costs in the proposed rule and conduct a detailed four-year impact analysis in order to ensure seniors' continued access to home health in every State.

We thank you for your attention to this critical matter.

Sincerely,

David B. McKinley, P.E.

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Earl Blumenauer

Todd Young

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