November 21, 2014

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
P.O. Box 8013  
Baltimore, MD 21244-8013

Dear Administrator Tavenner:

We are writing to relay the concerns we are hearing from home health agencies in our respective states about the medical review processes being undertaken by National Government Services (NGS), the Medicare Administrative Contractor (MAC) for CMS Region 1 (Jurisdiction K). Home health agencies in our states are being overwhelmed by a significant increase in medical review activity, with millions of dollars in payment denials related to physician face-to-face (F2F) documentation for medically necessary care provided to Medicare beneficiaries. Home health agencies in New England inform us that these reviews and payment denials, which they believe are in many cases unjustified, could jeopardize seniors’ access to home health care.

Home health care provides essential services for Medicare beneficiaries in our states. New England home health agencies are critical partners in helping seniors stay in their homes and age with dignity, as well as recover from illness or injury. Often, the home is the most cost-effective care setting, as well as the place where most seniors prefer to receive care. While we recognize the need to prevent fraud and abuse in the delivery of home health services and while we support appropriate measures to root out any wasteful or inappropriate Medicare payments, we believe it is also important to ensure that regulations are clear and consistent and that they do not result in reduced access to care for seniors and home health beneficiaries in our states.

Both the Office of the Inspector General, as well as CMS, have acknowledged that in its current form, the physician F2F requirement is being carried out in an inconsistent manner. We appreciate that the recently issued Calendar Year 2015 Home Health Prospective Payment System final rule modifies the current physician narrative requirement. However, our home health agencies remain concerned with the consequences of the review process as it has been carried out in 2013 and 2014. As a result, in certain instances, there may be occurrences where payments
are denied for appropriate medical services where the F2F requirement has been met and where the documentation submitted demonstrates both homebound status and need for skilled care.

Further, the volume of additional documentation requests (ADRs), denials, and associated costs are of great concern to many of our agencies. Home health agencies report that the rate of ADRs is double to quadruple the amount compared to previous years, and that the denial rate has also significantly increased from prior years. In certain instances, during 2014, withheld and denied reimbursements have exceeded the cost of a 2-week payroll for some New England agencies. Home health agencies in New England are confident that when many of these cases are reviewed at the higher appeals level, payment coverage will be granted. However, with the current backlog of Medicare appeals, agencies could wait years to recover reimbursement.

In response to these concerns, we ask that you:

- Explain what additional steps CMS will take to better ensure the clarity of the F2F regulations to prevent any further inconsistent denial of claims across the country;
- Describe how you will ensure that patient care will not be compromised while the appeals of F2F denials are being considered;
- Provide us with a current list of the outcomes of Medicare home health F2F denials and appeals across the country; and
- Consider the feasibility of working with home health agencies to reopen or settle claims related to F2F in a manner that is equally fair to both taxpayers and home health providers. Such considerations could include analysis as to whether an agreement similar to the administrative agreement process recently offered by CMS to hospitals that have a high volume of backlogged claim denials would be appropriate for backlogged home health claims related to F2F.

Additionally, we hope you consider the effect a lengthy appeals process has on the ability of home health agencies to provide care in our states and that you expedite the appeals process while CMS gives clear guidance on implementing this regulation to its auditors and practitioners going forward.

Thank you again for your consideration and attention to this issue. We look forward to your response.
Sincerely,

Kelly Ayotte  
Kelly A. Ayotte  
United States Senator

Jeanne Shaheen  
United States Senator

Susan Collins  
Susan M. Collins  
United States Senator

Angus King  
United States Senator

Patrick Leahy  
United States Senator

Bernard Sanders  
United States Senator

Elizabeth Warren  
United States Senator

Edward J. Markey  
United States Senator

Richard Blumenthal  
United States Senator