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DATE: March 6, 2014

TO: Chief Executive Officers  
Chief Operating Officers  
Chief Financial Officers  
Government Relations Officers  
Corporate Compliance Officers  
Physician Executives

FROM: Sean J. Hopkins  
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RE: **Sen. Robert Menendez Introduces Legislation to Address Two-Midnight Policy**

This morning, Sens. Robert Menendez (D-N.J.) and Deb Fischer (R-Neb.) formally introduced The Two-Midnight Rule Coordination and Improvement Act of 2014 to address the problematic Medicare two-midnight rule. The bill delays enforcement until medically appropriate criteria are developed, in consultation with stakeholders, for short inpatient hospital stays. The introduction of this legislation follows months of consultation between Senator Menendez's staff and NJHA's senior leadership, many of NJHA's members from across the state and the American Hospital Association (AHA).

Use the following link to view a copy of the legislative language: <http://bit.ly/1fLdNi9>

On Jan. 31, 2014, the Centers for Medicare and Medicaid Services (CMS) announced that it would extend the two-midnight enforcement delay for an additional six months through Sept. 30, 2014. The two-midnight rule took effect Oct. 1, but CMS partially delayed its enforcement through March 31, 2014. CMS also instructed the Medicare Administrative Contractors to re-review the Probe and Educate audit findings to-date to ensure their findings are consistent with CMS guidance.

Senator Menendez's legislation would require CMS to develop, in consultation with interested stakeholders, criteria with regard to the two-midnight rule for a short inpatient hospital stay that accounts for medical necessity. The developed criteria would be used to establish a payment methodology for short inpatient hospital stays as part of the FY 2015 Medicare hospital inpatient prospective payment system rule, which will be implemented in a budget neutral manner.

The legislation states that CMS may not enforce the two-midnight policy prior to Oct. 1, 2014 and may only proceed with enforcement once appropriate criteria is established, but not later than Oct. 1, 2015. It also would allow the continuation of the Probe and Educate audit process, but would not permit expansion of the number of records subject to review per hospital.

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Senator Menendez is in talks with his colleagues on the Senate Finance Committee and with the House Ways & Means Committee to have his legislation included in Medicare-related legislation that may be considered by Congress in the near future.

Also, in the House of Representatives, NJHA and AHA continue to encourage members of the New Jersey Congressional Delegation to co-sponsor H.R. 3698, the Two-Midnight Rule Delay Act. Although H.R. 3698 differs from Senator Menendez's legislation, co-sponsorship of the legislation will send a strong signal to congressional leaders and to CMS as to the extent of the concern about the two-midnight policy by members of Congress.

Use the following link to view a copy of the legislative language: <http://bit.ly/1fLdNi9>

NJHA will continue to work with Senator Menendez, its entire congressional delegation and CMS and will inform members as new developments occur.

If you have any questions, feel free to contact Sean Hopkins directly at 609-275-4022, [shopkins@njha.com](mailto:shopkins@njha.com) or Theresa Edelstein at 609-275-4102, [tedelstein@njha.com](mailto:tedelstein@njha.com).

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