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February 9, 2015

The Honorable Pat Roberts
109 Hart Senate Office Building
Washington, DC 20510

Dear Senator Roberts:

On behalf of the more than 79,000 members of the American College of Surgeons, I write to express the College's support for the Critical Access Hospital Relief Act of 2015 (S. 258). This legislation would remove the 96-hour physician certification requirement as a condition of payment for critical access hospitals (CAHs).

As you know, the CAH 96-hour rule (which 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) has been in the law and regulations since 1997, but until recently had not been enforced by the Centers for Medicare & Medicaid Services (CMS). In fact, prior to the September 5, 2013 publication of a CMS guidance document on the "2-midnights" policy, which included a short reference to the 96-hour rule, many CAHs and surgeons working at CAHs were completely unaware of the 96-hour rule's existence. 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*. Since publication of this guidance, CAH administrators have begun requiring surgeons to sign certifications that their patients are not likely to stay longer than 4 days. This is cause for concern because many rural surgeons routinely perform procedures that require a length of stay lasting longer than 96 hours. We feel 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 of 2015 would address this problem by removing the separate and previously unenforced condition of payment.

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Surgeons and other physicians would no longer be required to certify that each patient will be discharged or transferred in less than 96 hours in order for the CAH to receive payment. Instead, CAHs would simply be required to continue to meet the average annual length of stay of not more than 96 hours, as they have for more than 15 years.

Again, we applaud your efforts to address this issue and are pleased to support the Critical Access Hospital Relief Act of 2015. We look forward to working with you and your colleagues to enact this important legislation.

Sincerely,

David Hoyt, MD, FACS
Executive Director

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