

# United States Senate

WASHINGTON, DC 20510

October 17, 2013

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Tavenner:

We are writing to express our serious concerns with a proposal in the Centers for Medicare & Medicaid Services (CMS) proposed 2014 Medicare Physician Fee Schedule (PFS) rule to significantly reduce Medicare payments to laboratories for anatomic pathology services. We are concerned that the proposed new rates are not supported by adequate cost data and could lead to unintended consequences, including loss of patient access to critical cancer diagnostic services and increased costs elsewhere in the Medicare program. Furthermore, by law, CMS is required to determine payment for physician services using a resource-based methodology. Proposing to cap payments for anatomic pathology services at the Hospital Outpatient Prospective Payment System (OPPS) levels seems contrary to this statutory mandate.

While we appreciate CMS's efforts to improve payment accuracy and review potentially misvalued service codes, we are concerned that the methodology used to calculate OPPS rates does not necessarily reflect the actual cost of pathology services. In fact, we have heard from our constituents that some of the proposed payment rates will fall well below the cost of providing these diagnostic tests. Implementing cuts that average 26 percent across the board, and exceed 75 percent for some anatomic pathology services, could have a severe impact on the ability of laboratories, particularly independent laboratories in our local communities, to continue to provide these services to Medicare beneficiaries.

As our health care system moves further in the direction of precision medicine, the ability to obtain an accurate diagnosis is critically important. Diagnostic tests that are reimbursed at several hundred dollars under the current PFS are used to determine whether a patient is likely to respond to a course of therapy that may cost tens of thousands of dollars. We are concerned that reduced access to diagnostic services may result in some patients never receiving a treatment that could help them, while others receive expensive treatments that are ineffective for their particular condition, adding unnecessary costs to the Medicare program.

We are also concerned about whether CMS is taking into account the overall cost of treating patients in different settings. While the Proposed Rule focuses on anatomic pathology and other services that are reimbursed at a higher rate under the PFS than under the OPPS, many other services are reimbursed at a significantly higher rate under OPPS. If the proposed PFS cuts result in more patients receiving treatment in a hospital setting where the overall cost of care is higher, savings to the Medicare program will not be achieved.

Thank you for your attention to this matter. We urge you to reconsider this proposal in light of the extensive concerns our constituents have raised in their comments on the Proposed Rule, and we look forward to hearing from you.

Sincerely,

Amy Klobuchar

Chuck Schumer

Nikki Stenerow

Robert Menendez

Kelly A. Ayotte

Mark F. B. &

Barbara Mikulski

Jim Johnson

Greg Abbot

Chuck Grassley

Pat Ashcroft

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