

Congress of the United States
Washington, DC 20515

October 21, 2002

The Honorable Thomas Scully
Administrator
Centers for Medicare and Medicaid Services
Hubert Humphrey Building, Room 314-G
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Scully:

We are writing to you to express our concerns over the proposed hospital outpatient payment rates for 2003. We recognize the time and effort that you and your agency have given to improving the payment system. However, the proposed rule includes a number of unexpected and unexplainable payment swings for drugs, biologicals, and devices. We believe that the government should provide hospitals with stable, predictable rates. Therefore, we ask that the Centers for Medicare and Medicaid Services (CMS) limit the large changes in outpatient payments for drugs and devices contained in its final rule.

CMS was required to set new rates for these services because drugs and devices graduate from the pass-through (i.e. drugs paid at 95 percent of AWP and devices paid under hospital reduced charges) onto the Ambulatory Payment Classification (APC) group rates on January 1, 2003. We believe that the outpatient fee schedule could result in more accurate and stable payments for drugs and devices than the pass-through methodology. But the proposed APC methodology results in aberrant payments for certain drugs as well as dramatic changes from last year's payment rates for devices. For example, one drug is paid more than 700 percent of AWP and others are paid less than 10 percent of AWP. And the payment for the insertion of one cardioverter-defibrillator device will drop 51 percent.

We encourage CMS to continue checking the accuracy of the claims data. CMS should also examine external data to aid in correcting as many individual rates as possible. We strongly encourage CMS to work with manufacturers to identify price related information, which it believes would be of the greatest value for further refinements of hospital outpatient payments and establish procedures for the submission

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and analysis of such data. However, given the January 1 implementation date, CMS does not have the time to check all the rates and make extensive labor-intensive corrections.

If CMS is not able to correct the data, we believe CMS should consider adopting a more fundamental solution that would limit increases or decreases in payment for these items through a corridor approach. For certain drugs and biologics, the corridor could be set between 95 percent of AWP and the CMS estimated average hospital accounting cost. For devices, CMS could create a corridor with a ceiling at the list or wholesale price (from the pass-through applications) and a floor set at a percentage of the 2002 payment.

Although overall hospital payment rates are increasing more than three percent, these changes need to be made to ensure that hospitals are not financially penalized or deterred from providing these high technology and critical services. We also ask that, by February 1, 2003, your agency lay out a research agenda to improve the underlying methodology so that the corridors will no longer be needed in the future.

We look forward to working with you on this issue.

Best regards,



Bill Thomas
Chairman
Committee on Ways and Means



W.J. "Billy" Tauzin
Chairman
Committee on Energy and Commerce



Charles E. Grassley
Ranking Minority Member
Senate Finance Committee



Nancy L. Johnson
Chairman
Subcommittee on Health
Committee on Ways and Means



Michael Bilirakis
Chairman
Subcommittee on Health
Committee on Energy and Commerce