



American
Clinical Laboratory
Association

March 6, 2012

The Honorable John A. Boehner
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Harry Reid
Majority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

Dear Speaker Boehner and Leader Reid:

I am writing you today on behalf of the American Clinical Laboratory Association (ACLA), which represents the leading national, regional, esoteric, and pathology clinical laboratories. ACLA members are very concerned about the effect that the newly enacted reimbursement cuts to the Medicare Clinical Laboratory Fee Schedule (CLFS) will have on laboratories. We fear that the ability of some clinical laboratories to continue serving seniors is threatened by the cumulative effect of these cuts on top of the significant reductions that were included in the Affordable Care Act (ACA). ACLA respectfully requests that the current level of cuts be revisited and that relief be provided.

As you know, *The Middle Class Tax Relief and Job Creation Act of 2012* freezes Medicare physician payment rates at their current level through December 31, 2012. The \$18 billion cost of this ten month freeze is paid for by offsets from other Medicare provider payments. Those include rebasing the CLFS in 2013 by reducing payment rates by two percent at a savings of \$2.7 billion. This constitutes a full 15 percent of the total Medicare offsets included in that bill. Given the fact that laboratories only represent 1.6% of Medicare spending, they have clearly shouldered a significantly disproportionate share of the offsets.

The stated rationale for these latest cuts to the CLFS is a provision in the September 2011 Medicare Payment Advisory Commission (MedPAC) proposal to the Joint Select Committee on Deficit Reduction describing a policy that would permanently “fix” Medicare payments to physicians. One of the offsets to the \$235 billion package was to cut the CLFS payment rates by 10 percent, or \$11 billion over the next ten years.

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The Conference Report for *The Middle Class Tax Relief and Job Creation Act of 2012* justifies the latest 2 percent cut by saying that it “is less than the ten percent cut MedPAC suggested as part of its October 2011 package of potential policies to offset the cost of a comprehensive SGR fix.”

But this logic does not take into consideration the context for MedPAC’s proposals, which were made within the context of a total repeal of the current formula for physician payments – which has not occurred. MedPAC stated that, “Offsetting the cost within Medicare compels difficult choices including...offsets in other sectors that the Commission may not support outside of the context of repealing the SGR.”

In fact, MedPAC’s presentations and letter repeatedly stated that they do not necessarily recommend cutting Medicare to pay for the entire cost of repealing the SGR, noting that Congress has the ability to find offsets in other parts of the federal budget. Most importantly, MedPAC states that the Commission has not voted on each individual cut, “and their inclusion *should not be construed as a recommendation.* [emphasis added]”

While this most recent two percent cut for clinical laboratories may not sound significant, it is critical for Congress to re-examine this cut within the context of other recent changes to the CLFS. In sum, the cuts enacted in the ACA, the two percent cut just enacted, and anticipated cuts from sequestration will cut test reimbursement under the CLFS by approximately 23% over the next ten years. In January 2013 alone, payment rates for clinical laboratory services will be reduced over five percent – potentially wiping out the margins for many small laboratories serving the most vulnerable Medicare beneficiaries – in a single year.

While ACLA recognizes the difficult choices that Congress must make in the current budgetary environment, we believe that asking clinical laboratories to bear such a disproportionate share of the cost of temporarily addressing the SGR issue is particularly unfair, in light of the stark differences between historical updates to payments for clinical laboratories when compared to other providers.

The cumulative increase in provider payment rates from 1995 to 2011 was:

- 51.4% for the inpatient hospital market basket update;
- 35.6% for the outpatient hospital prospective payment system;
- 27.9% for Medicare payments to physicians under the SGR formula, and
- 13.6% for durable medical equipment, **compared to only 7.7% for clinical laboratories.**

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The cumulative impact of these new cuts will be devastating to the thousands of smaller laboratories across the nation. Over 80% of Medicare spending on laboratory services is for services provided in hospitals, physician office laboratories, and other small and medium-sized independent clinical laboratories. Indeed, the smallest laboratories – those most likely to face enormous financial strain as a result of the cuts – are often the sole provider of laboratory services to Medicare's most vulnerable beneficiaries in nursing homes and other similar settings.

When smaller laboratories serving this fragile market fail, there will be few laboratories willing or able to serve nursing homes. These small laboratories send phlebotomists to these settings to draw the specimen and transport it to the lab. Without these specialized providers, nursing homes will be forced to transport vulnerable elderly patients to the hospital to have their blood drawn. Spending hundreds of dollars to transport nursing home residents to the hospital for an average of \$20 worth of laboratory testing makes little sense, is harmful to these vulnerable seniors, and will cost Medicare far more.

In light of the information presented above, ACLA respectfully requests that the current level of cuts be revisited and relief be provided. Should you like additional information or to discuss this issue in greater detail, please do not hesitate to contact me at 202-637-9466 or amertz@acla.com.

Sincerely,

A handwritten signature in black ink that reads "Alan Mertz". The signature is written in a cursive, flowing style.

Alan Mertz
President

cc: The Honorable Max Baucus
The Honorable Orrin Hatch
The Honorable Dave Camp
The Honorable Sander Levin
The Honorable Fred Upton
The Honorable Henry Waxman