Congress of the United States
Washington, DC 20515

October 7, 2013

The Honorable Marilyn B. Tavenner
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Washington, DC 20201

Dear Administrator Tavenner:

We write to express our strong opposition to a proposal in the Centers for Medicare & Medicaid Services (CMS) proposed rule updating the Medicare physician fee schedule (PFS) rates and policies for calendar year (CY) 2014. Under the 2014 Medicare Physician Fee Schedule Proposed Rule, Medicare payments to independent laboratories for anatomic pathology services that diagnose a broad range of illness for non-hospital patients would be drastically cut. Without fully accounting for the resources provided and expertise required to perform these vital tests, CMS's proposed rule would diminish beneficiary access to crucial anatomic pathology services. We, therefore, urge CMS to reconsider its proposal to cap payments for anatomic pathology services at the Hospital Outpatient Prospective Payment System (OPPS) levels.

While CMS estimates that the 2014 policy change would cut global payments rates to independent laboratories an average of 26%, CMS is proposing to cut some anatomic pathology services by over 75%. Moreover, in many cases, the new payment rates will actually be below the cost of providing these tests. As a result, the ability of independent laboratories to continue to provide the full range of anatomic pathology services in our communities will be severely limited or curtailed.

Our chief concern is with the methodology used in determining the proposed cuts. The recommendation in the Proposed Rule to compare PFS data to the OPPS data diverges from the requirements set forth by statute and regulation, thereby circumscribing the Relative Value Unit (RVU) framework. Current law requires CMS to use a resource-based methodology to determine payment for physician services on the PFS, not OPPS. The PFS provides granular, code-level data for each anatomic pathology service, while OPPS data contains only lump, aggregate lab cost reporting from hospitals for all anatomic and clinical laboratory services. As such, the actual cost for providing anatomic pathology services are not necessary reflected in the OPPS data set. Unlike other site neutral payment proposals, the structural differences between PFS and OPPS may undercut CMS' ability to make valid comparisons between the two systems.

To better understand the rationale for the proposed rule, we are interested in learning why CMS did not make adjustments within the current methodology it uses for determining the value of physician fee schedule services as well as the statutory basis for using OPPS data to determine payments for clinical lab services paid under the physician fee schedule.

While pathology services account for less than 2% percent of Medicare spending, 70% of clinical decisions are based on the diagnostic and monitoring services provided by labs. Medicare beneficiary access to lab results are critical. Based on anatomic pathology services, physicians are best able to determine the most appropriate and effective medical care for their patients. Pathology services, including biopsies, are critical to the timely and effective treatment of millions of cancer patients. Limiting beneficiary access to the full-range of testing services will serve only to increase misdiagnoses or unnecessary, ineffective treatments without improved health care outcomes or reducing Medicare spending costs.

As CMS moves forward with rulemaking to finalize payment policies for CY 2014, we urge you to reconsider the proposed payment cap for anatomic pathology services at the OPPS levels. We believe the current proposal would have a detrimental impact on Medicare beneficiaries and their physicians who rely on anatomic pathology services to make accurate diagnosis.

Thank you in advance for consideration of our comments. We remain committed to working with you on payment policies that provide fair and accurate reimbursement and maintain Medicare beneficiary access to these vital diagnostic tools and look forward to your timely response to our questions.

Sincerely,

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