

**Congress of the United States**  
**Washington, DC 20515**

October 1, 2008

Mr. Kerry Weems, Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Mr. Weems:

We are writing to express our strong concerns about the proposed CMS rule for ambulatory surgery center (ASC) payments in 2009. As recently as five years ago, ASCs were paid 86.5 percent of hospital outpatient departments (HOPDs), on average. If the proposed rule were adopted, Medicare would pay ASCs only 59 percent of what hospitals receive for the same procedures. As a result, many procedures will no longer be viable in the ASC setting, meaning that costs will go up for the Medicare program and its beneficiaries as these procedures migrate to the hospital setting.

Since ASCs and HOPDs provide identical services, we believe CMS should adopt policies that maintain the alignment between ASC and HOPD payments. In particular:

- CMS should apply outpatient prospective payment system (OPPS) relative weights directly to the ASC payment rates instead of applying a secondary “rescaling” of the ASC rates.
- CMS should apply the same market basket updates to ASCs as HOPDs.


The primary cause of the additional payment cuts for 2009 is CMS's failure to use the same relative weights for surgical procedures in both the OPPS and ASC system. CMS proposes to break the link between the OPPS and ASC payment system and remove the effect of rising costs on the relative weights in the ASC, resulting in a further divergence between HOPD and ASC payments for identical procedures. As a consequence, ASCs will be penalized for providing a greater volume of procedures to Medicare beneficiaries at a lower cost than hospitals.

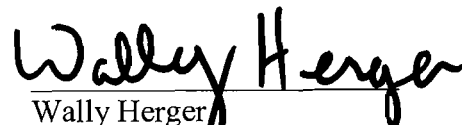
We do not believe this policy is in the best interest of the Medicare program or its beneficiaries. At a time when Medicare is struggling to contain overall costs, it does not make sense to penalize providers who are able to perform services more efficiently. Nothing in the statute requires such a budget neutrality adjustment. We are also concerned that CMS lacks adequate data to make an accurate secondary re-scaling adjustment, as the data now being used predates the payment system established last year and the 40% of procedures new to the ASC list. Furthermore, severing the link between the OPPS and the ASC payment system undermines CMS's broader efforts to improve the transparency of pricing systems for Medicare beneficiaries.


Finally, we believe the hospital market basket unquestionably is a more appropriate basis for annual ASC updates than the CPI-U, a measure that is not used to update any other Medicare prospective payment system. ASCs face inflationary pressures similar to those confronted by hospitals. Intense competition for nurses, rapidly rising medical device costs, and a growing need to adapt new health information technology contribute to inflation across a variety of health care settings. CMS uses the hospital market basket, which takes these costs into account, as the inflation update for the OPSS system. Use of CPI-U is not only inappropriate, it will also result in a growing divergence of payments over time between ASCs and HOPD for providing the identical services.

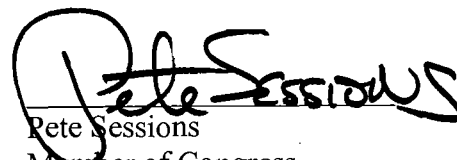
As you finalize the 2009 payment rule for ASCs, we urge you to modify these elements of the proposed rule to ensure that ASCs continue to be a high-quality, cost-effective option for Medicare beneficiaries. Thank you for your consideration of our concerns.


Sincerely,


  
Kendrick B. Meek  
Member of Congress


  
Wally Herger  
Member of Congress

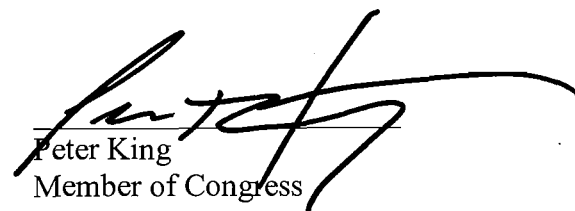
  
Bruce Braley  
Member of Congress

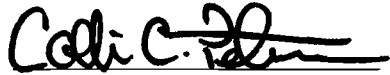
  
Pete Sessions  
Member of Congress

  
Ron Klein  
Member of Congress

  
Ron Paul  
Member of Congress

  
Silvestre Reyes  
Member of Congress

  
Peter King  
Member of Congress



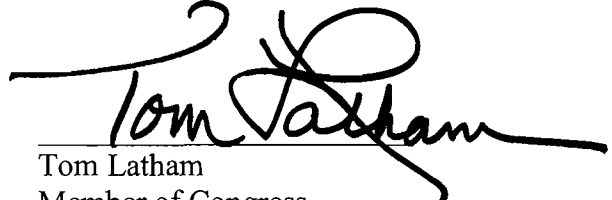
Collin Peterson  
Member of Congress



Tom Price  
Member of Congress



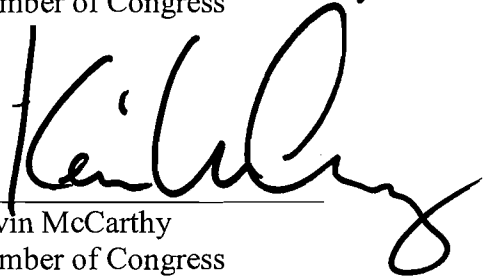
Rick Larsen  
Member of Congress



Tom Latham  
Member of Congress



Leonard L. Boswell  
Member of Congress



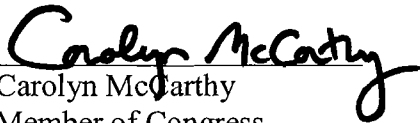
Kevin McCarthy  
Member of Congress



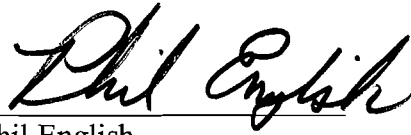
Dave Loebsack  
Member of Congress



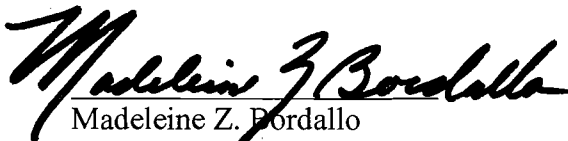
Marsha Blackburn  
Member of Congress



Carolyn McCarthy  
Member of Congress



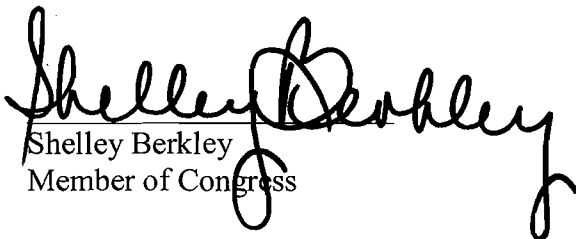
Phil English  
Member of Congress



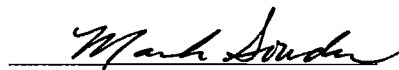
Madeleine Z. Bordallo  
Member of Congress



Steve King  
Member of Congress



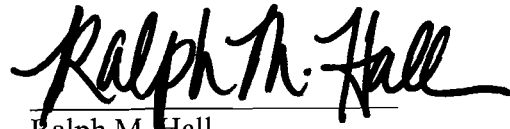
Shelley Berkley  
Member of Congress



Mark Souder  
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Corrine Brown  
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Ralph M. Hall  
Member of Congress



Solomon P. Ortiz  
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Sam Johnson  
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Bill Pascrell, Jr.  
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