

United States Senate

WASHINGTON, DC 20510

October 3, 2008

Mr. Kerry Weems
Acting Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Mr. Weems:

We write to express our concerns about the proposed CMS rule regarding payment rates for ambulatory surgery centers (ASCs).

As recently as 2003, ASCs were paid 86.5 percent of HOPDs, on average. If the proposed rule were adopted, Medicare would pay ASCs only 59 percent of what it would pay hospitals for the same procedures. As a result, many procedures will no longer be viable in an ASC setting. This could result in access problems and increased costs for some Medicare beneficiaries as these procedures migrate to the hospital setting.

The CMS proposal to break the link between the outpatient prospective payment system (OPPS) and ASC payment system and remove the effect of rising costs on the relative weights in the ASC will result in a further divergence between HOPD and ASC payments for identical procedures. As a consequence, ASCs will be penalized for providing Medicare beneficiaries procedures at a lower cost than hospitals in greater volume. Moreover, nothing in current law requires such a budget neutral adjustment and CMS lacks the data to make an accurate secondary re-scaling adjustment. Rather, the data used to support the new payment rates predates the changes being implemented.

ASCs face inflationary pressures similar to those confronted by hospitals. Intense competition for nurses, rapidly rising medical device costs, and a growing need to implement 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 OPPS system. Accordingly, we believe the hospital market basket 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. Use of CPI-U is not only inappropriate, but will also result in a growing divergence of payments over time between ASCs and HOPDs for providing the identical services.

To remedy these concerns, CMS should adopt policies that maintain the alignment between ASCs and hospital outpatient payment departments (HOPD) since they are providing the identical surgical services.

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; and
- CMS should apply the same market basket updates to ASCs as HOPDs.

These modifications are crucial to ensuring that services for beneficiaries are not put at risk. Furthermore, equal treatment for ASCs and hospitals will provide beneficiaries with fuller access to the treatment and care of their choosing.

Thank you for your attention to this matter.

Sincerely,

Mike Crayon

[Signature]

David J. Jetter