Congress of the United States
Washington, DC 20515

April 19, 2013

Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Tavenner:

We write regarding the two percent sequestration reduction to Medicare payments to providers – particularly those caring for cancer patients – effective April 1, 2013. We are concerned about how this cut will be implemented and if there is any flexibility available to your agency in how the cut is applied to the payments. Unencumbered access to critical cancer medicines for Medicare beneficiaries is a top priority for us and we would like to work with you to find a path forward that does not result in cancer patients being turned away by their oncologists.

As you know, the Medicare Modernization Act of 2003 (MMA) changed the pricing for cancer drugs covered under Medicare Part B to Average Sale Price (ASP) plus six percent. The intent was to reimburse cancer clinics and other providers for their drug acquisition costs at average market rates and to include an additional services payment (i.e., 6%) to cover inventory, facilities, storage, handling and waste disposal costs.

Our concerns are two-fold. First, it is unclear to us if the Centers for Medicare and Medicaid Services (CMS) has the statutory authority to reduce Medicare Part B drug reimbursement since the amount is specified in the MMA. Second, concerning sequestration, the Office of Management and Budget (OMB) has issued guidance instructing federal agencies and departments to, "[u]se any available flexibility to reduce operational risks and minimize impacts on the agency's core mission in service of the American people…".[1] Per a March 1, 2013, OMB memorandum notifying all federal departments and agencies of the sequestration order, "Agencies should operate in a manner that is consistent with guidance provided by OMB in Memorandum 13-03…"[2] We would like to see CMS use any flexibility that exists to implement the cuts in such a way that the core mission of the agency – to provide care to beneficiaries – is retained and protected.

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[1] OMB M-13-03, "Memorandum for the Heads of Executive Departments and Agencies," Office of Management and Budget (OMB) website, http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-03.pdf, January 14, 2013
[2] OMB M-13-06, "Memorandum for the Heads of Executive Departments and Agencies," OMB website, http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-06.pdf, March 1, 2013

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It was reported in the news that cancer clinics across the country are already turning away thousands of Medicare patients advising them to seek treatment elsewhere, citing the Medicare sequester cuts that took effect April 1.[3] Our hope is that there is a solution that neither diminishes the access of beneficiaries to the treatments they need nor their ability to seek needed treatment in the setting of their choice. We would like more information on this issue from CMS and request your help in addressing the following:

1) Are Medicare Part B drug reimbursement rates set in statute?
2) Does CMS have, and if so, intend to use the authority to reduce Medicare Part B drug reimbursements?
3) Will CMS be monitoring access to care for Medicare beneficiaries once the sequester takes effect – particularly for services where interruption or delay could mean success or failure of treatment, such as cancer care? What steps has CMS taken to avoid negatively affecting Medicare beneficiaries receiving chemotherapy and other specialty infusible drugs?
4) Does CMS believe any flexibility exists to modify cuts in areas where access barriers become present?
5) How will CMS calculate the reduction required under the sequester? Will it apply to the entire payment for the drug (ASP+6%) or only the base ASP amount, or only to the +6%?
6) Has CMS reviewed the potential program costs and impact on Medicare beneficiaries that the reduction required by the sequester may cause? For example, will reduced access to cancer clinics cause beneficiaries to seek services in higher-cost sites of care?
7) Have you received or collected any information about Medicare beneficiaries, to date, being turned away from their healthcare provider due to uncertainty about the future reimbursement rates for their Part B drugs?

We ask that you answer the questions posed and if ultimately this cut is applied, use any and all flexibility available to you to ensure a potential sequester cut is applied to just the 6 percent service payment and not to the underlying fixed drug cost (ASP). We are asking, therefore, that any available flexibility be used to direct the cuts away from patients. Our hope is that there is a solution that protects patients' access to their healthcare professionals. We look forward to working with you to implement impending spending reductions in a way that does not threaten needed access to care for Medicare beneficiaries.

Thank you again for your attention to this important matter. In light of the sequester implementation on April 1, we kindly request that you provide a response to this letter on or before April 29, 2013.

Sincerely,

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[3] Sarah Kliff, "Cancer clinics are turning away thousands of Medicare patients. Blame the sequester," *The Washington Post*'s WonkBlog, http://www.washingtonpost.com/blogs/wonkblog/wp/2013/04/03/cancer-clinics-are-turning-away-thousands-of-medicare-patients-blame-the-sequester/, April 3, 2013

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