

Congress of the United States
Washington, DC 20515

August 17, 2009

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Ave., SW
Washington, D.C. 20201

Dear Secretary Sebelius:

On behalf of the cancer patients we represent as well as the freestanding and community-based cancer centers which treat those patients, we are writing to express our grave concerns with the 19 percent cut in Medicare reimbursement for radiation oncology services contained in the CY 2010 Physician Fee Schedule Proposed Rule. This cut will mean that Medicare payments for certain radiation therapy treatments will be reduced by up to 44 percent. A cut of this magnitude would be devastating to cancer care and would result in many freestanding and community-based cancer centers, especially in rural areas, closing their doors to treating cancer patients. Given the Administration's commitment to curing cancer as outlined in the President's February 24, 2009 speech to Congress and including \$6 billion in his FY 2010 budget to support cancer research which is "part of a sustained, multi-year plan to double cancer research in our country," we see this action as contrary to your intent to help cancer patients and make advances in cancer care.

Of particular concern is a clearly faulty policy regarding equipment utilization which accounts for at least one quarter of the cut to radiation therapy in the proposed rule. In the rule, the Centers for Medicare and Medicaid Services (CMS) proposes to change the utilization rate (from 50 percent to 90 percent) for equipment over one million dollars. This policy stems from concerns raised by the Medicare Payment Advisory Commission (MedPAC) and others regarding the volume growth of *diagnostic imaging* services over the past several years. CMS even cites a March 2009 MedPAC report in its discussion on diagnostic imaging and the equipment utilization policy, but then inexplicably applies the equipment utilization policy to radiation therapy.

We are writing you today to emphasize a clear distinction: *Radiation therapy is not diagnostic imaging*. To ensure that the dose of radiation required to kill the tumor is delivered to the tumor and only to the tumor, the radiation used to treat cancers and the radiation used to guide the treatment are not diagnostic in nature. In fact, radiation therapy occurs only after a cancer has been diagnosed. The therapeutic use of radiation to treat cancer should not be the target of those concerned with volume growth in the area of diagnostic imaging.

The incorporation of the new AMA practice expense survey data exacerbates the reduction that would be caused by modifying the assumed equipment utilization rate for radiation

oncology equipment. In fact, as a result of the incorporation of this survey data, CMS is proposing to eliminate 50% of all medical equipment and other direct costs from the rate-setting formula. As the result of this and other technical aspects of the rate-setting methodology, CMS is proposing to decrease Medicare payment for radiation oncology treatment by up to 44 percent, even though the AMA's recent practice expense survey suggests that radiation oncology practice expenses have remained relatively stable or experienced modest increases.

In a patient's personal war against cancer, what radiation therapy *does* represent are technologies to cure cancer, control the growth of cancer or relieve pain and other cancer symptoms. Every year, more than 1 million cancer patients receive radiation treatment and such therapies have been used to treat cancer patients for more than 100 years. New technology and improved techniques continue to allow radiation oncologists to better target radiation and more effectively eliminate cancer cells while protecting healthy cells. It is imperative that the continued achievements of radiation therapy not be stymied by inappropriate cuts.

We urge CMS to refrain from finalizing the proposed reductions in Medicare payment for radiation oncology services, and, in any event, to refrain from applying a higher assumed equipment utilization rate to radiation oncology equipment, as proposed in the CY 2010 Physician Fee Schedule Rule.

Sincerely,

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Signatories to 8/17/09 letter:

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Rep. Mike Rogers (R-Ala.)

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Rep. Ginny Brown-Waite (R-Fla.)

Rep. Peter Roskam (R-Ill.)

Rep. Jim Marshall (D-Ga.)

Rep. Rodney Alexander (R-La.)

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