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ASTRO applauds new GAO report on physician self-referral abuse in prostate cancer treatment and urges swift passage of “Promoting Integrity in Medicare Act of 2013”

Fairfax, Va., August 1, 2013 – ASTRO Chairman Michael L. Steinberg, MD, FASTRO, called attention to the Government Accountability Office’s (GAO) striking report released today, [“Medicare: Higher Use of Costly Prostate Cancer Treatment by Providers Who Self-Refer Warrants Scrutiny,”](#) that details clear mistreatment of patients who trusted their physicians to care for their prostate cancer. Dr. Steinberg and radiation oncologists nationwide called on Congress to pass the [“Promoting Integrity in Medicare Act of 2013” \(PIMA\)](#), introduced earlier today by Rep. Jackie Speier (D-Calif.) and Rep. Jim McDermott (D-Wash.), that would address GAO’s findings, result in better care for patients and save billions of dollars in Medicare that could offset the costs of repealing the Medicare physician payment formula (sustainable growth rate—SGR).

The federal “Ethics in Patient Referrals Act,” also known as the self-referral law, prohibits physicians from referring a patient to a medical facility in which he or she has a financial interest in order to ensure that medical decisions are made in the best interest of the patient without consideration of any financial gain that could be realized by the treating physician. However, the law includes an exception that allows physicians to self-refer for so-called “ancillary services,” including radiation therapy. Over the years, abuse of the in-office ancillary services (IOAS) exception has diluted the self-referral law and its policy objectives, making it simple for physicians to avoid the law’s prohibitions by structuring arrangements that meet the technical requirements of the law,

thereby circumventing the intent of the exception. Numerous studies, including three recent GAO reports, have shown that physician self-referral leads to increased utilization of services that may not be medically necessary, poses a potential risk of harm to patients and costs the health care system millions of dollars each year.

Today's GAO report, "[Medicare: Higher Use of Costly Prostate Cancer Treatment by Providers Who Self-Refer Warrants Scrutiny](#)," requested by bipartisan leaders in Congress, reviewed limited specialty [urology] groups' use of intensity modulated radiation therapy (IMRT), an effective form of advanced radiation therapy, for prostate cancer treatment. Experts, such as the National Comprehensive Cancer Network, recommend using IMRT judiciously for treating prostate cancer, and that patients should receive an unbiased presentation of all of the effective treatment options, including IMRT. In contrast, the GAO report found that from 2006-2010:

- IMRT utilization among self-referring groups increased by 356 percent. Overall increases in IMRT utilization rates and spending were due entirely to services performed by limited-specialty groups. IMRT utilization among non-self-referrers decreased by five percent.
- The number of IMRT services performed by limited specialty [urology] groups increased by 509 percent, while true multispecialty groups IMRT use decreased 3.8 percent.
- IMRT spending by self-referral groups increased by approximately \$138 million, compared to a \$91 million decrease in the non-self-referral group.
- Increases in IMRT utilization among self-referring practices could not be attributed to patient preferences, age, geographic location or patient's health status. Financial incentives were likely a major factor in increased referrals for IMRT among the self-referring practices. The financial incentives for self-referral groups led to patients not receiving other appropriate and less expensive treatments, including brachytherapy, prostatectomy and active surveillance.
- Self-referring centers referred 52.7 percent of men over the age of 75 for IMRT at self-referring centers. For these men, guidelines recommend active surveillance of their disease and the avoidance of aggressive treatment such as IMRT.

The GAO report concluded, "... the higher use of IMRT by self-referring providers results in higher

costs for Medicare and beneficiaries. To the extent that treatment decisions are driven by providers' financial interest and not by patient preference, these increased costs are difficult to justify."

"We are extremely concerned that many older male patients are receiving such vigorous, possibly unnecessary treatment by urology groups. Clearly, these self-referring urology groups are steering patients to the most lucrative treatment they offer, depriving them of their full range of treatment choices, including potentially no treatment at all," said Dr. Steinberg. "GAO's findings also demonstrate that IMRT utilization would actually be declining if not for a small cadre of profit-motivated, self-referring urologists."

ASTRO believes that the GAO's recommendations of increased tracking and transparency are well-intentioned but insufficient to stop the costly, hazardous abuse of the IOAS exception. ASTRO concludes that the GAO's own reports and numerous independent studies overwhelmingly affirm that self-referral results in financial incentives that lead to overutilization of health care services, unnecessary spending and inappropriate care for patients.

"Patients and the Medicare program can no longer afford for self-referral abuse to continue. New regulations of tracking and reporting fall short of what is necessary to ensure unbiased patient care—closure of the self-referral loophole. We urge Congress to take swift action to close the in-office ancillary services exception for radiation therapy by passing PIMA. Radiation therapy is not an ancillary service, but rather its own distinct medical treatment, akin to surgery. This new GAO report certifies that the self-referral loophole has serious negative consequences for patients and Medicare's bottom line," said Dr. Steinberg.

Today's GAO report on self-referral in radiation therapy is the third in a groundbreaking, four-part series. The first report in November 2012 on self-referral in advanced diagnostic imaging, titled "Higher Use of Advanced Imaging Services by Providers Who Self-Refer Costing Medicare Millions" found that "providers who self-referred likely made 400,000 more referrals for advanced imaging services than they would have if they were not self-referring" — at a cost of more than \$100 million in 2010. In July 2013, the GAO report, "Action Needed to Address Higher Use of Anatomic Pathology Services by Providers Who Self-Refer," found that self-referring providers likely referred nearly one

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million more unnecessary anatomic pathology services than non-self-referring providers, costing Medicare approximately \$69 million. The final report will detail self-referral for physical therapy services.

“It is acutely obvious that the self-referral loophole must be closed to protect patients and to strengthen the Medicare program,” continued Dr. Steinberg. “This loophole endangers patients and erodes their trust in us as physicians. While most urologists care deeply about high-quality patient care and consistently put patients before profits, a minority group of self-referral urology practices is endangering patients and wasting valuable, finite Medicare resources.”

Contrary to the claims of limited specialty [urology] groups, GAO’s report confirms that these practices are not truly integrated health care centers, but that they are moneymaking schemes intended to increase volume and achieve high profits. Effective and efficient integrated care is rendered every day by clinicians who do not take financial advantage of the IOAS. The overwhelming majority of physicians treat patients based on the best interest of the patient without engaging in self-referral schemes, while also providing coordinated care.

“Unfortunately, when you look at the numbers in this report, you start to wonder where health care stops and where profiteering begins,” said Senate Finance Committee Chairman Max Baucus (D-Mont.), in a [statement](#) released today. “Enough is enough. Congress needs to close this loophole and fix the problem.”

Reps. Speier’s and McDermott’s PIMA legislation answers the call of numerous influential bipartisan groups who have examined self-referral abuse and recommended changes to the law. In September 2012, a [New England Journal of Medicine article](#), authored by leading health policy experts including former CMS administrator Donald Berwick, MD, MPP, called for closing the self-referral loophole for radiation therapy and other so-called “ancillary services.” The [Center for American Progress](#) agreed with narrowing the IOAS exception, as well as several notable bipartisan groups, including the [Bipartisan Policy Center](#), under the leadership of former Senate Majority Leaders Tom Daschle (D-S.D.) and Bill Frist (R-Tenn.), and the [Moment of Truth Project](#), headed by Erskine Bowles and former Senator Alan Simpson (R-Wyo.). [President Obama’s proposed FY 2014 Budget](#) also

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recommended closing the self-referral loophole, which could save the Medicare program more than \$6 billion during the standard 10-year budget window.

In addition, a November 2012 [Bloomberg News investigative report](#) scrutinized ordeals faced by California prostate cancer patients treated by a urology clinic that owns radiation therapy equipment and found that physician self-referral led to mistreated patients and higher health care costs. [The Wall Street Journal](#), [The Washington Post](#) and [The Baltimore Sun](#) also published similar critical reports in the last three years illustrating that limited specialty [urology] groups owning radiation therapy machines have utilization rates that rise quickly and are well above national norms for radiation treatment of prostate cancer.

“ASTRO recommends removing radiation therapy services from the IOAS exception. We strongly support PIMA because it closes the self-referral loophole in a responsible, targeted way that roots out abuse while ensuring that truly integrated multispecialty groups and high-performing health systems can continue to provide high-quality and efficient care,” said Dr. Steinberg. “Self-referral undermines ASTRO-supported efforts to move Medicare toward quality- and value-based payment. Closing the self-referral loophole will help to stabilize the fee-for-service system today, while we charge ahead on the long, challenging path to developing a fair, high-functioning payment system.”

ASTRO is a partner in the Alliance for Integrity in Medicare (AIM), a broad coalition of medical societies committed to ending the practice of inappropriate physician self-referral and focused on improving patient care and preserving valuable Medicare resources. In addition to ASTRO, AIM partners include the American Clinical Laboratory Association, the American College of Radiology, the American Physical Therapy Association, the American Society for Clinical Pathology, the Association for Quality Imaging, the College of American Pathologists and the Radiology Business Management Association. ASTRO and AIM recommend using the Medicare savings to help offset the costs of repealing the Medicare physician payment formula this year.

ABOUT ASTRO

ASTRO is the premier radiation oncology society in the world, with more than 10,000 members who are physicians, nurses, biologists, physicists, radiation therapists, dosimetrists and other health care professionals that specialize in treating patients with radiation therapies. As the leading organization in radiation oncology, the Society is dedicated to improving patient care through professional education and training, support for clinical practice and health policy standards, advancement of science and research, and advocacy. ASTRO publishes two medical journals, International Journal of Radiation Oncology • Biology • Physics (www.redjournal.org) and Practical Radiation Oncology (www.practicalradonc.org); developed and maintains an extensive patient website, www.rtanswers.org; and created the Radiation Oncology Institute (www.roinstitute.org), a non-profit foundation to support research and education efforts around the world that enhance and confirm the critical role of radiation therapy in improving cancer treatment. To learn more about ASTRO, visit www.astro.org.

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