

Congress of the United States
Washington, DC 20515

March 18, 2011

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Donald Berwick, MD
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW, Room 314 G
Washington, DC 20201

Dear Secretary Sebelius and Administrator Berwick:

We appreciate the Centers for Medicare and Medicaid Services' (CMS) work to establish a reasonable regulatory structure for dialysis facilities under the new prospective payment system (PPS). However, we are concerned that the 2011 payment adjustment tied to anticipated facility behavior is based on a significantly inaccurate estimate and could lead to reduced efficiencies and potential disruptions in dialysis care.


Based on an assumption that just 43 percent of dialysis facilities would elect to fully opt into the PPS in 2011, instead of participate in a four-year phase-in, CMS imposed a negative "transition adjustment" of 3.1 percent on all dialysis facilities in order to maintain budget neutrality. While we recognize that it was difficult to project precisely how facilities would behave, CMS should now know the actual number of facilities that chose full PPS and those that chose to transition to it, as facilities were required to inform the agency of their election decision by November 1, 2010.

Because we understand that twice as many or more facilities elected to fully participate in the PPS than CMS estimated, we are concerned that failure to immediately correct the transition adjustment could result in substantial underfunding of dialysis treatment and potential disruptions in care. Given the importance of the success of the PPS to patients, providers and the Medicare program, we urge CMS to revise the transition adjuster immediately to account for the facilities' actual election. In the absence of a correction using actual elections, CMS should revise the estimate underlying the transition adjustment using its current best estimate, which would not require rulemaking. Of course, the agency should then revise the transition adjuster to reflect actual elections in the ordinary course.

Not only is a correction the right course of action for Medicare beneficiaries with end stage renal disease, we also believe it is the one mandated by the PPS' budget neutrality.

Thank you for your consideration and your continued commitment to caring for our Medicare beneficiaries.

Sincerely,


CHARLES W. BOUSTANY, JR., MD
Member of Congress


SHELLEY BERKLEY
Member of Congress

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Brett Guthrie Red Havel Norm Deeks

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