

Seema Verma
Administrator
Center for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Ave, S.W., Room 445-G
Washington, DC 20201

Dear Administrator Verma:

We are writing regarding the Centers for Medicare & Medicaid Services (CMS) calendar year (CY) 2019 outpatient prospective payment system (OPPS) proposed rule. When Congress passed Section 603 of the Bipartisan Budget Act of 2015, we sought to establish a clear distinction between hospital outpatient departments (HOPDs) that were billing under the OPPS at that point in time versus all new HOPDs that would seek reimbursements following the passage of that Act. Congress then reaffirmed the position that this distinction was to apply to all services rendered in an HOPD that had received the grandfathered status under Section 603 by passing Section 16001 of the 21st Century Cures Act in 2016, which reinforced that any HOPD that was in the midst of being built prior to the passage of the Bipartisan Budget Act of 2015 would also receive this grandfathered status. In taking these steps we sought to demonstrate that HOPD facility itself was the focal point of the grandfathered status; even if the facility was in the midst of being built and was not yet providing services to beneficiaries.

Thus, we are disappointed that CMS has proposed significant cuts to HOPDs for CY 2019, for they are counter to the intent of Section 603 and will jeopardize access to care for our nation's seniors. As we demonstrated in both 2015 and 2016, Section 603 was not meant to limit a grandfathered facility's ability to offer existing services or to offer new services to meet patient need, and we remain concerned today that an attempt to change this will hinder the ability of these facilities to adapt and meet patient needs. The proposed rule notes an admirable intent to reduce copayments for beneficiaries by implementing these cuts, and while we share the goal of reducing out of pocket costs, we are concerned that a reduction in out of pocket spending in this instance comes at the expense of seniors' ability to access the right care in the right setting. Thus, we ask that you once again reconsider actions that would impact the integrity of grandfathered HOPDs and the patients they serve.

The facilities impacted by this rule include those that provide care to some of the most vulnerable patient populations in difficult to serve areas, and a number of changes in the rule are needed to ensure that they can continue serving their communities. Most notably, CMS has proposed to ignore the grandfathered status of these facilities and pay the "PFS-equivalent" (Physician Fee Schedule) rate for evaluation and management (E&M) services furnished at such facilities, contrary to Congressional intent as evidenced by Section 603. Furthermore, CMS proposed cutting payment to 40 percent of the current HOPD rate for grandfathered off-campus HOPDs that begin to furnish a new service from a clinical family not offered prior to November 1, 2015. If implemented, this policy would unfairly penalize grandfathered off-campus HOPDs that expand the critical services they offer to meet the changing needs of their patients.

In passing Section 603, Congress was clear in its intention to grandfather existing facilities, so that only new off-campus sites would have payments reduced, and as noted previously, while we share the goal of reducing out of pocket costs for our seniors, the proposed cuts to both HOPD E&M services and to future services from new clinical families threaten seniors' access to care in their own communities. Therefore, we ask that that CMS ensure these facilities be treated as Congress intended and protected from the proposed cuts. We appreciate your consideration of these concerns.

Sincerely,

Rob Portman
United States Senator

Debbie Stabenow
United States Senator