

XX, 2009

Charlene Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Acting Administrator Frizzera:

We are writing to request your assistance to address a significant problem that threatens patient access to cost-effective surgical care – adequate payments to ambulatory surgery centers (ASCs). As you know, ASCs have been subjected to a six year freeze. On July 2, 2009, CMS released its proposed rule with 2010 ASC payments that proposes a 0.6 percent inflation update for ASCs in 2010 and proposes to continue additional payment policies that further drive payments to ASCs downward.

We urge the Centers for Medicare and Medicaid Services (CMS) to adopt two key policies in the final 2010 payment rule for ASCs; 1) apply the hospital market basket inflation factor to ASC payments in 2010, instead of the Consumer Price Index for Urban consumers (CPI-U) factor used in the past and 2) utilize the same relative weights across settings. We are concerned in the very near future certain procedures or classes of surgical services will no longer be viable in the ASC setting.

ASCs provide patients with a high-quality, convenient and less expensive option for their outpatient surgery. When Medicare beneficiaries choose ASCs for their outpatient surgery, both the beneficiary and the Medicare program save money. ASCs are a critical point of access for important screening benefits and other nondiscretionary services such as diagnostic colonoscopies and cataract removal surgery. Given that ASCs are the provider of choice for these and other benefits in many markets, establishing an appropriate ASC payment update factor is important to ensuring continued access to services which improve and extend beneficiaries' quality of life.

One of the major contributing factors for ASC declining payments is the failure to use appropriate relative weights for surgical procedures in ASC systems. We do not believe this policy is in the best interest of the Medicare program or its beneficiaries. At a time when Medicare is struggling to contain overall costs, it does not make sense to penalize providers who are able to perform services more efficiently. Nothing in the statute requires such a budget neutrality adjustment. In addition, severing the link between the OPSS and the ASC payment system undermines CMS's broader efforts to improve transparency for Medicare beneficiaries.

The second major reason for the declining ASC payments is the utilization of an inappropriate inflation update. We believe the hospital market basket unquestionably is a more appropriate basis for annual ASC updates than the CPI-U.

ASCs are the only Medicare providers for which payment updates are determined using the CPI-U, an index designed to serve as an economy-wide measure of consumer inflation and driven by changes in energy and housing prices. The CPI-U inputs do not reflect the items and services that ASCs must purchase in order to provide care for their patients.

It is our understanding that CMS has the authority to implement the hospital market basket as the index for updating ASC payments. Section 1833(i)(2)(C)(i) of the Social Security Act requires that the Secretary update the payment amounts established under the revised system by the CPI-U as a **default**, but only if the Secretary has not otherwise updated the payments for that year. The statute, therefore, does not mandate the adoption of any particular update mechanism. CMS can, and should, update its policies to establish the hospital market basket as an alternative ASC update mechanism. In fact, CMS noted the breadth of authority around updating ASC payments when implementing the new system.

The hospital market basket is based on factors directly related to the cost of providing outpatient services. In other major payment systems, such as skilled nursing facility and home health services, CMS appropriately ties payments to market baskets constructed to reflect the change in prices for the items used in each setting. Similar consideration should be applied to the ASC setting.

Thank you for your review and consideration of this important issue. We would appreciate an update on your policy development in this area as soon as possible.

Sincerely,