

November 12, 2020

Chairman Richie Neal  
2309 Rayburn House Office Building  
Washington, D.C. 20515

Chairman Frank Pallone  
2107 Rayburn House Office Building  
Washington, D.C. 20515

Ranking Member Kevin Brady  
1011 Longworth House Office  
Building  
Washington, D.C. 20515

Ranking Member Greg Walden  
2185 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Neal, Chairman Pallone, Ranking Member Brady, and Ranking Member Walden,

We are writing to request Congress address an anomaly in the law that is hampering patient access to needed medical care during this pandemic.

Thousands of Medicare beneficiaries rely on the nation's 5,900 Medicare-certified ambulatory surgery centers (ASCs) for their surgical and preventive care. In general, the care beneficiaries receive in ASCs is provided at lower rates with lower beneficiary copays compared to services performed in a hospital outpatient department (HOPD).

However, due to an oversight in the statute, about four percent, or 134 more complex procedures, have a higher copayment in the ASC than in the HOPD, even though the Medicare payment is lower in the ASC. This is because Congress capped the beneficiary's copayment in the HOPD at the inpatient Medicare deductible amount and held the facility harmless for the difference when it created the HOPD prospective payment system.

Congress established the cap in HOPDs to encourage care to migrate from the inpatient setting to the more efficient outpatient setting. However, when Congress gave the Secretary of Health and Humans Services broad discretion to revise the ASC payment system to align it with the outpatient prospective payment system it did not specify that the cap should be extended.

Due to the COVID-19 pandemic, many elective yet medically necessary surgeries have been postponed or cancelled due to lockdowns and risk of transmissions to providers and patients. While ASCs have played a critical role in meeting this

pent-up demand for many healthcare services, the higher co-pay in the ASC setting creates access issues for Medicare beneficiaries for higher-cost procedures such as total knee arthroplasty.

However, the surge of new COVID cases in many areas of the country means that patients need access to scheduled procedures that can be provided in a setting that does not risk unnecessary COVID transmissions. Protecting patients with uniform out-of-pocket liability in all sites of care will assist our seniors, many of which are under economic duress.

The undersigned organizations urge Congress to take this opportunity to assist patients on their out-of-pocket costs and ensure access to medically necessary procedures by holding facilities harmless and capping Medicare beneficiaries' copayments at the same level they are capped in the HOPD payment system.

Sincerely,

