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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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November 5, 2013

Mr. Jonathan Blum
Deputy Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Blum,

It has come to our attention that the Centers for Medicare and Medicaid Services (CMS) has undertaken significant changes in policy regarding the allocation of Medicare prescription drug costs for terminally ill beneficiaries who are receiving hospice care. Specifically, CMS is seeking recoupment, back through 2011, for certain Medicare prescription drugs paid by Part D for hospice patients. In addition, confusion has arisen concerning CMS' intent for Part D coverage of drugs that are unrelated to such Medicare beneficiaries' terminal illness. Given the uncertainty that has been created, we are requesting that CMS immediately issue guidance to stop all activity concerning the intersection of the Part D prescription drug benefit and the Medicare hospice benefit until the affected stakeholders can be convened to resolve these issues, so that the public trust in the effective and efficient management of the Medicare program is protected and strengthened, and beneficiaries are assured of receiving the benefits to which they are entitled.

Part D and Hospice Guidance: Part D plan sponsors have been informed by CMS that once a patient elects the Medicare hospice benefit, Medicare Part D should no longer pay for any drugs. This conflicts with the Medicare statute and hospice regulations, which clearly state that hospices are responsible only for drugs and supplies "related to the terminal illness or related conditions." The hospice patient's treating physician is in the best position to know and clearly state which drugs are related to hospice care. It is a great concern of mine that the expertise and counsel of the hospice physician and his or her decisions are being completely ignored in this situation.

Recoupment: In addition, CMS' Medicare Drug Benefit and C & D Data Group and Medicare Program Integrity Group have recently issued guidance instructing Part D plan sponsors to implement processes to recoup payments, back through 2011, for any analgesics paid for by Part D for a beneficiary who was receiving hospice care. This directive specifically states that CMS is presuming that all such drugs are "related to hospice care and thus a case-by-case analysis to determine relatedness is not required." While analgesic use by hospice patients is very often

related to the terminal illness and should be covered by the hospice as part of the hospice benefit, this is not the case 100% of the time even for this category of drugs, and the broader issue is that the determination of which drugs are, and are not, related to a particular patient's terminal diagnosis or related conditions is a clinical determination that must be made on patient-specific basis by the hospice physician responsible for that patient's care. The hospice must be allowed to review the medication list and determine which drugs should have been covered by the hospice.

I would encourage you to stop this recent misguided interpretation and work with the hospice and Part D communities, in addition to any other impacted stakeholders, to come to a thoughtful resolution that is in keeping with the law, regulations and longstanding Medicare policy. I look forward to a quick response to this issue and expect that you will take our views into consideration. If you have any questions regarding this request, please contact Kristin Welsh of the Finance Committee staff at (202) 224-4515.

Sincerely,

A handwritten signature in blue ink, appearing to read "Orrin Hatch", with a large circular flourish on the left side.

Orrin G. Hatch
Ranking Member
Committee on Finance