



May 4, 2011

The Honorable Fred Upton  
Chairman  
House Energy and Commerce Committee  
U.S. House of Representatives  
Washington, D.C. 20510

The Honorable Henry Waxman  
Ranking Member  
House Energy and Commerce Committee  
U.S. House of Representatives  
Washington, D.C. 20510

The Honorable Pitts  
Chair, Health Subcommittee  
House Energy and Commerce Committee  
U.S. House of Representatives  
Washington, D.C. 20510

The Honorable Frank Pallone  
Ranking Member  
House Energy and Commerce Committee  
U.S. House of Representatives  
Washington, D.C. 20510

Dear Representatives Upton, Waxman, Pitts, and Pallone:

I am writing to you on behalf of AARP's millions of members and the millions of older Americans and their families who depend upon the Medicare program. We applaud the House Energy and Commerce Committee for addressing the Sustainable Growth Rate (SGR) problem and for seeking solutions to the problem from stakeholders within the health care industry.

As you know, the SGR formula by which Medicare updates its physicians' fees is widely viewed as broken. Yet for more than a decade, Congress has failed to change the system, and the problem continues to grow worse. It has become increasingly more expensive to fix, and the anticipated cuts to doctors continue to grow larger. Unless Congress acts by the end of this year, doctors will see a nearly 30 percent cut in their payments from Medicare. Facing this constant uncertainty and dramatic cuts to their payments, more and more physicians are choosing to no longer take Medicare patients. Our members are concerned they could lose access to doctors if their pay is cut.

Protecting seniors' access to their Medicare doctors is one of AARP's top priorities. We have surveyed our members, and whether they are Democrats, Republicans or Independents, they believe Congress should find a bipartisan, bicameral, fiscally responsible solution that will keep doctors in the Medicare program. They are concerned that they will lose access to their doctors and future retirees won't be able to get the care they need.

## **Long-Term Versus Short-Term Solution**

Rather than address the SGR problem in the long term, Congress has consistently chosen instead to pass short-term band-aid approaches. In 2010, Congress passed five such short-term fixes and, unfortunately in many cases failed to act in a timely manner before enacting legislation to retroactively address the issue. The longer we wait to address the long-term solution to the problem, the more physicians we can expect to leave – or threaten to leave – the Medicare program.

We understand that many provider groups have suggested that Congress enact yet another short-term solution to give lawmakers time to develop a long-term solution to the physician payment problem. We agree that simply enacting short-term solutions with no movement toward a lasting solution is not helpful.

AARP encourages Congress to enact the longest possible resolution to the SGR problem. We believe any solution should aim to emphasize value over volume, and take steps to promote better quality care. Our members believe Congress has a responsibility to keep doctors in Medicare so today's seniors and future retirees can keep seeing the doctors they trust. Seniors deserve the peace of mind that they can find a doctor when they need one.

## **Private Contracting and/or Balanced Billing**

Some Members of Congress and provider organizations have recently suggested relaxing “private contracting” and/or “balanced billing” rules as a potential solution to the physician payment problem. Under current rules, a physician may enter into a private contracting arrangement with a beneficiary and, in such arrangement, the beneficiary agrees to pay 100 percent of the physician's charges for services (under this arrangement, physician charges are typically higher than the Medicare-approved charge for the same service). Some physicians who have private contracting arrangements also charge an additional monthly or annual fee for their services (e.g., concierge medicine). Although such arrangements are possible, Medicare does not cover services provided by physicians who have entered into a private contracting arrangement with Medicare beneficiaries. Physicians who engage in these practices are barred from participating in Medicare for two years; and those who enter into private contracts must do so for all of their Medicare patients (e.g., they are forbidden from picking and choosing patients and/or services they may bill Medicare).

Under current law, Medicare allows for “balance billing” by non-participating providers; however, the program places a limit on how much non-participating physicians may “balance bill” beneficiaries: no more than 15 percent of Medicare's allowed charges. So, for example, nonparticipating physicians are permitted to charge \$115 for services for which Medicare would allow physicians to charge only \$100.

AARP strongly opposes relaxing the current Medicare rules related to balanced billing and/or private contracting because they would do nothing more than shift costs onto Medicare beneficiaries. Some have estimated that it would cost roughly \$330 billion over ten years to “fix” the SGR system. Proponents of these private payment arrangements believe this would give the government fiscal certainty. AARP strongly opposes the idea of allowing physicians to charge beneficiaries whatever they want, which would essentially pass much of the \$330 billion cost directly on to Medicare beneficiaries. While this may provide more fiscal certainty to the federal government, it would produce tremendous financial insecurity among those on Medicare, who would have no limits on what their doctors could charge them.

Some balanced billing proposals would allow Medicare beneficiaries to contract with physicians outside Medicare at rates established between the physician and beneficiary. Such proposals blatantly favor the physician and amount to nothing more than physicians dictating payment rates and forcing beneficiaries to accept those rates or seek services elsewhere. This is particularly troubling for those beneficiaries who currently experience problems finding a physician who will treat them.

Both private contracting and balanced billing threaten access to care for beneficiaries who cannot afford to pay the charges physicians impose. Before Medicare was created in 1965, more than half of older Americans were uninsured and they were the population most likely to be living in poverty. Today, about 50 percent of Medicare beneficiaries have incomes below \$22,000. The average older person already spends about one third of his/her income on health care. These individuals cannot afford to pay more out-of-pocket for physicians’ services. As a result, we believe these types of approaches would be attractive primarily to those beneficiaries with the highest incomes. Moreover, encouraging these physicians to charge patients different amounts based on their patients’ incomes undermines Medicare as a universal insurance program.

In addition, beneficiaries do not have access to pricing or physician performance information that would allow them to compare costs and choose lower-cost, higher value physicians. Even if such information were available, beneficiaries often lack the ability to use the information wisely, especially when in need of urgent medical services.

Private contracting and balanced billing also increase health care costs by raising prices. Seventy-five percent of all health care costs in our country are spent on the treatment of chronic diseases, many of which could be easily prevented with early interventions. Research has shown that when out-of-pocket costs increase, consumers will visit doctors less. These arrangements would only deter beneficiaries from seeking preventive and other care until their illness worsens. Discouraging preventive care will increase the need for costly treatment and intervention of these chronic diseases, shifting costs to other parts of the Medicare program.

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Finally, not only do private contracting and balanced billing shift costs onto beneficiaries, but neither does anything to improve the quality of care delivered. In fact, under both approaches, physicians will continue to be rewarded by the quantity of care provided, rather than on the quality of that care. As Congress grapples with how to address the SGR problem, it should focus on rewarding quality providers, not on the quantity of services provided.

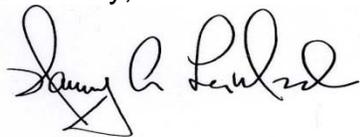
## **Conclusion**

Over 47 million older and disabled Americans depend on Medicare today. As you know, the recently enacted Affordable Care Act (ACA) included many delivery system reforms—such as Accountable Care Organizations (ACOs), patient-centered medical homes, value-based purchasing, quality-based payments, and patient safety initiatives. We have been working closely with hospitals, physicians, and health plans to help ensure that these delivery system reforms can be implemented so that current and future beneficiaries can realize a Medicare program that is both higher quality and more efficient.

However, we believe these types of major delivery system reforms take time, planning, and commitment from Congress and the President to achieve a new way of delivering care with new incentives based on achieving quality -- not quantity -- of care. In addition, we believe our nation's leaders must help educate seniors about how they want to reform our system. Asking seniors simply to pay more to see the doctor of their choice can't be the answer.

Our members believe that giving seniors the peace of mind that they can keep seeing their doctors isn't a Republican or Democratic issue. And older Americans agree it's time to work together to find a solution both sides can support that will keep doctors in Medicare. AARP is committed to working with both sides of the aisle to ensure Congress reaches a financially responsible solution that will help prevent seniors from losing their doctors.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy LeaMond". The signature is fluid and cursive, with a large initial "N" and "L".

Nancy LeaMond  
Executive Vice President  
State and National Group