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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,

The Medicare Rights Center is a national, nonprofit consumer service organization that works to ensure access to affordable health care for older adults and people with disabilities through our counseling and advocacy services, educational programs and public policy initiatives. Through our direct work with Medicare patients, we have specific insights into the impact of payment policies on people with Medicare.

There is no doubt that changes to the Sustainable Growth Rate (SGR) must be made in order to ensure that people with Medicare continue to have adequate access to physicians. While there is not currently a general physician shortage in the Medicare program, according to the Medicare Payment Advisory Commission (MedPAC), we must have a stable and predictable physician payment mechanism to maintain access to physicians for Medicare patients. Because of the uncertainty surrounding SGR, some doctors are telling people with Medicare that they will no longer be able to see Medicare patients due to these putative cuts. This uncertainty in the past few years over payment rates—Congress acted five times in 2010 to prevent cuts—only serves to increase anxiety. For that reason, it is imperative that policymakers begin to seriously examine a longer-term fix.

However, we have grave concerns about proposals that would allow physicians to enter into private contracts with Medicare patients or “balance bill” patients for cost-sharing over the Medicare-allowed

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amount. Our concerns about the SGR stem from our concerns about Medicare patients' access to providers. Proposals that would increase costs for Medicare consumers do not address this issue; rather, such proposals create an access issue of a greater and different sort.

Currently, half of all people with Medicare have household incomes below \$20,000 per year, and half of the next generation of people with Medicare will have annual incomes below \$27,000. Furthermore, out-of-pocket spending for Medicare patients is already burdensome and increased from 11.8 percent in 1998 to 16.2 percent in 2006. People with Medicare are not in a position to bear increased health care costs. Through our casework, we have seen time and time again Medicare patients putting their financial stability at risk to pay for needed care or forgoing medically necessary care altogether.

There are existing rules that allow physicians to charge more than the Medicare-allowed amount. Although these rules are designed to preserve participation by physicians in the Medicare program, in our experience even these rules are flawed and often result in access problems or financial harm to Medicare patients. Under the current rules, doctors can enter into private contracts with Medicare patients, but if they do so they are not allowed to participate in the Medicare program for two years. Providers may also charge fees for certain costs that are not covered by Medicare. As demonstrated by the case examples below, expanding the allowance of private contracting and balance billing will only exacerbate the problems patients already face and will do nothing to protect patients' access to providers.

Ms. H went to a doctor who had opted out of Medicare. Because the doctor was no longer participating in the Medicare program, in order to see the doctor, Ms. H had to enter into a private contract with the doctor and pay an agreed-upon fee. Due to the cost, Ms. H was forced to find an alternative doctor who participated in Medicare and limited patient charges to the Medicare-allowed amount.

Mr. B called the Medicare Rights Center because he was no longer able to afford the extra costs being charged by his cardiologist. Although the doctor accepted Medicare, he wanted to charge an administrative fee to all Medicare patients for record-keeping, administrative and other costs "not covered by Medicare." Mr. B was unable to pay this fee because he lives on a limited income. Therefore, he has not seen his cardiologist and must now find a new doctor.

Through its casework, the Medicare Rights Center knows the risks associated with the policies described above. Approaches that would strengthen private contracting authority or the right to balance bill on an individual basis would create a tiered patient system in which doctors would be able to arbitrarily determine rates and decide to whom those rates would apply.

Furthermore, private-contracting and balance-billing proposals set harmful precedents. Although current proposals under consideration may pertain only to doctors, there is no guarantee that such private contracting rights will not begin to be applied to other providers, such as hospitals, and in other health care settings as well. These proposals serve to fundamentally undermine the purpose of the Medicare program by unraveling the protections against high costs that prevent people from accessing the care they require.

Finally, these payment mechanisms do not help to improve the quality of care people with Medicare receive. They would undermine the incentives and payment reforms that serve as the foundation for the Affordable Care Act (ACA), and that achieve savings in the Medicare program by paying for quality of care rather than for the quantity of services provided. If providers are allowed to balance bill individuals for care, than as we move towards a pay-for-performance model, providers can simply

make up payment differences through private contracts without taking measures to improve the quality of care patients receive. In short, private contracting and balance billing, like certain recent deficit-reduction proposals concerning Medicare, simply shift costs to Medicare patients and do nothing to address the underlying source of rising Medicare costs, which is rising costs in the health care sector overall.

While we appreciate that Congress takes seriously its obligation to find a long-term solution to the SGR problem, passing costs to consumers is not an appropriate answer and will only lead to the same result as the SGR, if it is ever implemented: decreased access to physicians.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Baker". The signature is fluid and cursive, with the first name "Joe" and last name "Baker" clearly distinguishable.

Joe Baker
President