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The Honorable Sylvia M. Burwell  
Secretary of Health and Human Services  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

October 16, 2015

Dear Secretary Burwell:

I write for three reasons in light of the pending increases in Medicare Part B premiums and deductibles:

1. To bring your attention to the increase in Part B costs that I believe positively correlates with the increase in patients being considered "outpatients" in observation status.
2. To ask if HHS has data from 2012, 2013, 2014 that could be looked at to see how hospital "outpatient" observation status coding has affected Part B costs.
3. **To ask you for an in-person meeting to discuss the issue and these findings**, in hopes that we can work together to take action to obviate the impact of Observation Status.

Over the last few years an unprecedented amount of hospital care has been billed to Medicare Part B, rather than Part A. This is supported by [MedPAC's June 2015 report](#) on acute inpatient services and post-acute care. The following statistics from the MedPAC report demonstrate this point:

- In 1999 outpatient spending was 16% of all hospital spending, in 2013 it was 24%,
- Outpatient spending per FFS beneficiary was \$590 in 1999, jumped to \$1,440 in 2013 (a 144% increase),
- The number of hospital PPS discharges declined in part because of the shift to outpatient setting,
- The number of "outpatient" observation visits increased 96% from 2006 to 2013. During this time,
  - The rate of "outpatient" observation visits per Part B beneficiary increased from 28 per 1,000 to 56 per 1,000 in 2013, and
  - 14% of so-called outpatient observation stays were 48 hours or longer,
- As a result, SNF admissions declined paralleling this decline in "inpatient" hospital use.

Though I understand the complexity of the health marketplace has changed dramatically since 1999, and that the price of almost everything in health care has risen, I still believe that at least part of the root cause for Part B billing increases has to come from the utilization of "observation" status coding. Further, though I know that HHS has been working on fixing the issue of observation status for some time, for example, via the outpatient hospital observation

status rule issued in 2013, the rule does not fix the problem for patients, and does not help control hospital care inappropriately billed to Medicare Part B instead of Medicare Part A.

I hope you will consider this compelling data when considering how to deal with the pending spike in Part B cost-sharing. Clearly, "outpatient" observation status plays a significant role in increasing the costs of Part B, in a way never intended by those who developed the cost-sharing formula. Part A was intended to cover these hospital costs – in fact it is called "Hospital Insurance" in the Medicare Act. Hospital costs for stays over 24 hours should not be considered "outpatient," and should not be included in the costs used to calculate Part B cost-sharing.

I hope these, and the many other unintended consequences of the ever-increasing use of "outpatient" hospital observation status, will move you to reconsider the policy. Please let me know what your next steps will be. I look forward to hearing from you and working together on behalf of Medicare and its beneficiaries.

Sincerely,

A handwritten signature in blue ink that reads "Joe Courtney". The signature is written in a cursive style with a large, sweeping "J" and "C".

Joe Courtney