

United States Senate

WASHINGTON, DC 20510

May 19, 2023

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Young:

Ensuring reliable access to high-quality care is critical for Medicare beneficiaries with end-stage renal disease (ESRD) and other chronic kidney conditions. Unfortunately, a myriad of factors, including staffing shortages and rising labor costs, threaten providers' capacity to deliver life-sustaining dialysis care, particularly in rural and underserved communities. Considering these challenges, as the rulemaking cycle moves forward, we encourage the Administration to leverage existing authorities to include a forecast error adjustment framework in its Calendar Year (CY) 2024 End Stage Renal Disease (ESRD) Prospective Payment System (PPS). A forecast error adjustment, rooted in precedent, would protect ESRD patients' access to quality dialysis services.

CMS has long recognized the implications of the differences between forecasted market basket updates applied in a given payment year and revised updates developed using additional quarters of actual, historical data. Under normal circumstances, health care providers can absorb the impacts of these calculation gaps to allow for certainty and predictability in subsequent years. However, CMS has recognized that the market basket update methodology can produce large forecast errors in either a positive or negative direction in times of economic uncertainty,¹ which is exactly the outcome in CYs 2021 and 2022 under the ESRD PPS. Failing to account for and mitigate these gaps could undermine dialysis patients' access to care.

Given these risks, we strongly encourage the incorporation of a clear and consistent framework for market basket forecast error adjustments in the CY 2024 ESRD PPS as long-applied under the skilled nursing facility (SNF) PPS and the capital update framework under the hospital inpatient prospective payment system (IPPS). In adopting the SNF PPS and IPPS policies, CMS addressed the potential for volatility and unpredictability through uniform, rules-based methodologies, with clear and straightforward thresholds intended to trigger adjustments only on the basis of atypically substantial forecast errors, preserving the prospective nature of the payment systems in question.

We recognize that CMS declined to pursue a similar route in the CY 2023 ESRD PPS final rule, stating it was not necessary based solely on a positive CY 2021 forecast error. However, we note that there were two consecutive years of errors under the ESRD PPS, which mirrors the circumstance that predicated CMS' adoption of the SNF PPS forecast error adjustment policy.

¹ "FAQ - Market Basket Definitions and General Information," CMS Office of the Actuary, National Health Statistics Group, accessed at www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/medicareprogramratesstats/downloads/info.pdf

We appreciate the Administration's ongoing engagement to protect beneficiaries' access to high-quality care, and we look forward to working with you to address this issue in the CY 2024 PPS rulemaking. Thank you for your attention to these important issues.

Sincerely,



Benjamin L. Cardin
United States Senator



Marsha Blackburn
United States Senator



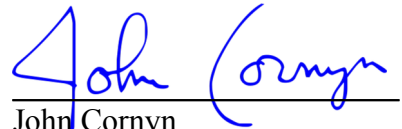
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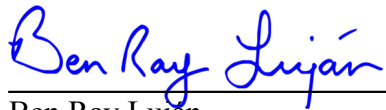
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