Congress of the United States
Washington, DC 20515

March 11, 2011

Honorable Donald Berwick, M.D.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Ave, S.W.
Washington, DC 20201

Dear Dr. Berwick:

We are writing to express our concerns about implementation of Section 3310 of the Patient Protection and Affordable Care Act (PPACA) and CMS assertions that the provision will reduce Medicare program costs. The Notice of Proposed Rulemaking (NPRM)[1] proposed to limit dispensing of brand-name drugs to quantities of seven days or less, commonly referred to as short-cycle dispensing.

We are concerned about the apparent lack of data that drives this proposal. CMS recognized this issue when the agency proposed to require pharmacies to collect unused drugs and report them to their plan sponsors in an effort to gather data that CMS does not currently possess. The limited data CMS cites to support short-cycle dispensing are an unpublished study from a single pharmacy and three published studies, the most recent of which is 25 years old.

CMS acknowledged that implementation of this policy will increase costs associated with dispensing fees by 50%-100%, without providing a detailed methodology for this estimate. Yet comments to the proposed rule argue that dispensing costs would be higher, and lead to increased premiums. When considering increased dispensing fees, we are concerned that the potential savings from reduced drug expenditures will be insufficient to provide the necessary savings.

In the absence of comprehensive data, we would recommend that CMS consider delaying implementation of this provision while data are collected and analyzed. This could be accomplished through a limited data analysis from a representative sample of pharmacies without imposing a costly burden on all pharmacies serving long-term care residents. This would ensure that the intended objectives of the statute are met: reducing waste in dispensing to long-term care residents and providing real savings to the Medicare program and its beneficiaries.

We fear that implementing a policy based on incomplete information could have the potential for increasing premiums without any offsetting reduction in waste.

We understand that CMS feels an obligation to move ahead with implementation, but believe it is in the best interests of beneficiaries and taxpayers that we have the best possible data upon

[1] Medicare Program: Proposed Changes to the Medicare Advantage and the Medicare Prescription Drug Program for Contract Year 2012 and Other Proposed Changes. Federal Register, November 22, 2010.

which to implement Medicare policy. Therefore, we encourage CMS to delay implementation until reliable data is available to ensure that this policy will reduce program costs and pharmaceutical waste, while protecting patient safety and avoiding increased premiums due to higher dispensing fees.

Sincerely,

Peter J. Roskam
MEMBER OF CONGRESS

Sam Graves
MEMBER OF CONGRESS

Geoff Davis
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