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MEDICAL DEVICE MANUFACTURERS ASSOCIATION
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February 15, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 2051

Dear Speaker Pelosi and Leader McCarthy:

We are writing in support of the request submitted by a large bipartisan group of Members of Congress seeking relief for office-based specialist physicians from cuts to Medicare Physician Fee Schedule (MPFS) rates. The substantial reductions in Medicare nonfacility payment for many procedures—which are the subject of a recent congressional letter organized by Rep. Bobby Rush and Rep. Gus Bilirakis, and which are currently being phased in over a four year period starting with the CY2022 payment year—could eliminate the physician office as a viable setting of care, thereby reducing treatment options for Medicare beneficiaries who may have difficulty accessing a hospital outpatient department (HOPD) or ambulatory surgery center (ASC).

The reductions are the result of action taken by the Centers for Medicare and Medicaid Services (CMS) to update labor cost data that is used in calculating the direct practice expense (PE) portion of payment for procedures performed in the physician office. That data has not been updated since 2002, and we do not object to the need to utilize more recent data, which is arguably long overdue. However, due to CMS administrative policies relating to MPFS budget neutrality, and specifically the agency's policy of maintaining budget neutrality within the direct PE pool, the update is resulting in massive cuts to procedures with high supply costs relative to labor costs. Furthermore, because PE reimbursement is provided only for office-based procedures—as opposed to HOPDs and ASCs, for which supply and labor expenses are paid as part of the bundled Ambulatory Procedure Classification (APC) payment—the cuts are only impacting office-based specialists, and will almost certainly lead to a shifting of procedures from the nonfacility setting, which is more accessible and clinically appropriate for many beneficiaries.

The decision by CMS to phase-in the update over four years will not mitigate the impact these severe payment cuts will have on office-based specialists and the beneficiaries who rely upon them for care. For device-intensive PFS services, the phase-in will only delay the eventual unviability under the MPFS rather than preventing it, affecting the ability of patients to access proven treatments for a wide variety of conditions, including cancer, peripheral vascular disease, benign prostatic hyperplasia (BPH) and chronic wounds. It is difficult to believe that office-based physicians will continue offering a service for which the Medicare payment fails to cover even the cost of supplies—let alone physician work, malpractice expenses and other costs. CMS should avoid knowingly creating incentives that lead to an unnecessary shift of office procedures to more costly and less accessible facility settings.

We appreciate the attention that Congress has given to the immense pressures facing physicians, especially during the unprecedented COVID-19 public health emergency. Unfortunately, the severe threat posed by direct PE cuts for office-based specialists remains unaddressed. We believe it is critical that Congress take action as part of the upcoming funding legislation to provide relief from these cuts. Such action also will provide additional time for CMS and Congress to fully explore alternative PE methodologies that will not adversely and permanently affect patient access to device-intensive office-based procedures.

Thank you for your consideration of this critically important issue for providers and beneficiaries.

Sincerely,

Advanced Medical Technology Association (AdvaMed)

Medical Device Manufacturers Association (MDMA)

Medical Imaging & Technology Alliance (MITA)