

November 12, 2013

The Honorable Max Baucus
Chairman
Senate Finance Committee
United States Senate
Washington, DC 20510

The Honorable Orrin G. Hatch
Ranking Member
Senate Finance Committee
United States Senate
Washington, DC 20510

The Honorable Dave Camp
Chairman
House Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Sandy M. Levin
Ranking Member
House Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

Dear Leaders of the Senate Finance Committee and the House Ways and Means Committee:

On behalf of the American Society of Nephrology, thank you for the opportunity to provide comments regarding the discussion draft on Sustainable Growth Rate (SGR) repeal and Medicare physician payment reform. ASN represents nearly 15,000 physicians, scientists and healthcare providers dedicated to providing the best care to kidney patients and developing future cures for kidney diseases. ASN and the professionals it represents are strongly committed to maintaining the integrity of the physician-patient relationship, and to providing equitable patient access to optimal quality, efficient care regardless of socioeconomic status, geographic location, or demographic characteristics.

The society appreciates the Committees' engaging ASN and other members of the physician community in consideration of the discussion draft and shares the committee's hope that these joint efforts will lead to the successful repeal and replacement of the SGR. ASN recognizes the vital necessity of ensuring the long-term fiscal viability of the Medicare Program and appreciates that replacing the current physician payment system with a more stable, predictable system that sustainably manages changes in those payments over time is an important component.

The society commends the Committees for developing the discussion draft and believes that many aspects of it are highly reasonable; ASN offers several suggestions for consideration in this letter. ASN also observes that some components described in the draft will require further conceptualization, and stands ready to work with the Committees and Congress to do so in the coming weeks and months. In summary, the society recommends that Congress:

- *Prioritize preserving patient choice and flexibility for physicians to individualize care.*
- *Consider directing the Secretary to monitor and assess patient access to care*

- under any new payment system.*
- *Continue to interact and pursue partnerships with ASN and other members of the medical community to further conceptualize fiscally responsible alternatives to the current SGR system.*

As nephrology healthcare professionals, many patients under the care of the society's members are Medicare beneficiaries—primarily via the Medicare End-Stage Renal Disease (ESRD) Program. Accordingly, ASN's members are dedicated to ensuring that any changes to the payment system protect the highly vulnerable population of people with kidney disease, as any unintended consequences would have a disproportionately large effect on these patients.

Value-Based Payment Performance Program

ASN believes that moving towards Value-Based performance programs (VBPs) and Alternative Payment Models (APMs) that involve a greater degree of risk and quality measurement components is, generally, an appropriate direction for physician payment to aim for in the future. Implementing VBPs and encouraging physicians to participate in APMs is reasonable, however, it is also important to recognize that not all healthcare professionals will have access to or be able to participate in APM programs. Moreover, the success of a VBP program will be predicated on the strength of the quality and resource use metrics selected for assessment.

The Committees propose establishing a VBP that would assess professionals' performance on quality measures, resource use, clinical practice improvement activities, and electronic health record (EHR) meaningful use. ASN supports sunsetting the three existing payment penalty programs in favor of a more streamlined VBP, and concurs with the committee that it would be reasonable to exempt professionals who receive a significant portion of their revenues from an APM from the new VBP. Importantly, the VBP metrics that will dictate payment adjustments based on performance beginning in 2017 must be fully specified prior to the start of the performance period.

ASN commends the Committees for proposing that professionals would be eligible for payment increases based on superior performance, rather than merely eligible for payment decreases for failing to meet minimally acceptable standards. ASN believes that this structure will help motivate innovation to elevate the quality of care and promote individualization of care for each unique patient.

ASN is not opposed to using the existing Physician Quality Reporting System (PQRS) measures in the quality category, but observes that the program does not offer a complete picture of the care people with kidney disease receive or the outcomes that are important to their health. As future measures are developed, the process must be transparent and include input from both professional and patient communities. Moreover, it is crucial that providers be assessed with measures that are appropriate for the specific patient population for which they care. Evidence-based measures appropriate to the general population are often not appropriate for patients with highly specialized care needs—including those with kidney disease, who are on dialysis, or have received a kidney transplant.

Accordingly, engaging providers, including specialists such as nephrologists, in a transparent, iterative process to select and define quality measures and establish

appropriate benchmarks will be crucial to ensure that patients receive the highest quality care under the new payment system. Engaging professionals in developing resource use metrics and methodology will be similarly important, and ASN emphasizes the necessity of involving nephrology health professionals in determining those that relate to kidney care. Much more specificity regarding the resource use aspect of the VBM will be needed before ASN can take a position on this issue, but appreciates the opportunity to continue dialogue with the Committees and the Congress in the future.

A focus on developing measures based upon the most rigorous scientific evidence available will also be necessary to prevent unintended consequences for patient outcomes or the viability of the program in the future, and ASN encourages the Committee to consider emphasizing the importance of high-quality data in measure development.

Encouraging professionals to participate in clinical practice improvement (CPI) activities is a laudable goal, and ASN does not offer any objection to the five CPI categories noted in the discussion draft (below) but observes that there may be other worthwhile CPI activities beyond this list.

- Expanded practice access, such as same-day appointments for urgent needs and afterhours access to clinician advice;
- Population management, such as tracking individuals to provide timely care interventions;
- Care coordination, such as timely communication of clinical information (e.g., test results) and use of remote monitoring or telehealth;
- Beneficiary engagement, such as establishment of care plans for patients with complex needs and self-management training; and
- Participation in any Medicare APM.

ASN also notes that the exact mechanism by which professionals would document their efforts in these categories remains unclear in the discussion draft. The society recommends that the Committees think carefully regarding this mechanism, with an eye to avoiding overly burdensome or duplicative reporting requirements. In particular, ASN notes that physicians are already required to conduct many similar CPI activities and report their efforts and outcomes to the American Board of Internal Medicine in order to maintain licensure and certification. ASN suggests that the Committees consider whether it would be feasible or advisable to allow Maintenance of Licensure and Maintenance of Certification activities to also count towards the CPI element of a new VBP.

The discussion draft proposes that EHR Meaningful Use requirements would continue to achieve compliance in the EHR category. While ASN appreciates that promoting meaningful use of EHRs, the current Meaningful Use program includes very real barriers to nephrology professionals' successful participation. Specifically, the program requires that 50% of the eligible professionals' patient encounters occur in a location equipped with a certified EHR.

Many nephrology health professionals spend a significant amount of time in dialysis facilities; however, these facilities are not considered eligible providers—and few dialysis facility EHRs can communicate with the EHRs in professionals' offices. As such,

nephrology professionals must either physically bring their EHRs into the facility and re-enter data into their own EHR—an administratively burdensome practice that does not promote the goal of meaningful use—or not participate at all. ASN fully appreciates that CMS, not the Committees, has created this problematic situation and that SGR replacement legislation is not the appropriate venue to solve it, but simply wishes to make the Committees aware that existing issues within the Meaningful Use program may uniquely challenge nephrology professionals' to participate successfully in this component of the VBP.

Encouraging Care Coordination for Individuals with Complex Chronic Care Needs

ASN applauds the Committees for proposing to establish payment for complex chronic care management services, recognizing that coordinated care management is a critical component contributing to better health for individuals and reduced expenditures to the Medicare program. When administered by nephrology health professionals, the improved access to comprehensive, coordinated care management that the proposed codes would make possible would likely significantly improve outcomes and quality of life for patients with kidney disease.

Patients with kidney disease typically have multiple other serious chronic co-morbidities, including hypertension, diabetes, and various cardiovascular disorders. Nephrology health professionals are specifically trained to manage these multiple co-morbidities, develop appropriate care plans, and coordinate treatment for them in the context of kidney disease. Effective management of these co-morbidities is especially important for patients with earlier stages of CKD, during which proper care coordination by a nephrologist can help slow the progression of kidney disease towards ESRD as well as help prevent the advancement of co-morbidities that are caused or worsened by kidney disease, such as hypertension. The proposed codes would help increase patient access to the optimal quality of kidney care and overall care management from a nephrology health professionals and, ultimately, help reduce the overall cost of care for these patients.

Ensuring Accurate Valuation of Services Under the Physician Fee Schedule

ASN supports the proposal to direct the Government Accountability Office (GAO) to study the AMA/Specialty Society Relative Value Scale Update Committee (RUC) processes for making recommendations on valuation of physician services. The discussion draft also notes that the Secretary would solicit information from selected professionals to assist in accurate valuation under the fee schedule. Professionals who submit the requested information may be compensated, while those who do not submit information would receive a ten percent payment reduction for all services in the subsequent year.

ASN agrees with the Committees that accurate valuation of services is important, but is concerned that the level of documentation that would be necessary to accurately value services could create a substantial reporting burden. The society does not currently have a solution, but encourages the Committees to think carefully about this aspect of the discussion draft, and is prepared to assist in those deliberations in any way possible.

Recognizing Appropriate Use Criteria

The Committees propose to implement a program that would require ordering professionals to consult with appropriate use criteria for advanced imaging and electrocardiogram services, and that the Secretary would “specify appropriate use criteria from among those developed or endorsed by national professional societies or other entities.” The discussion draft also notes that it would “leverage physician-developed standard of care guidelines to avoid the unnecessary provision of services.” ASN acknowledges and appreciates the Committee’s recognition that professionals who are the experts their fields should play a leading role in defining what constitutes appropriate care.

However, the society notes that it will be critically important to define what constitutes a physician-developed guideline, and what level of evidence underpinning that guideline is acceptable. For instance, certain guidelines reflect international practice patterns and standards of care, whereas others are specific to patient care in the United States; this is an important distinction to consider.

Within health professional communities, there is often disagreement regarding what standard of care and appropriate use looks like. Especially in instances where there is little data or evidence to substantiate recommendations, controversy regarding the best care for patients can ensue even within professional communities. This highlights the challenge of attempting to identify and use appropriate use criteria developed or endorsed by national professional societies or other entities to set payment policy.

While ASN does not, unfortunately, have a ready solution to this challenge, the society reiterates the importance of using only the highest-quality, rigorous scientific evidence to develop policies influencing professionals’ payment. The society also observes that use of consensus-based guidelines—which may reflect current thinking but are not necessarily predicated on rigorous evidence—could potentially lead to unintended consequences for patients.

Again, ASN appreciates the scope and importance of what the Committees are attempting to achieve in terms of appropriate use of healthcare services in this aspect of the discussion draft, commends the Committees for pointedly involving expert professional opinion in the process, and looks forward to continuing to collaborate to make the future payment system as evidence-based and rational as possible.

Other Issues Related to Access to Care

ASN believes that the Committees’ discussion draft is a significant step towards moving from a volume-based payment system to a system that rewards, quality, efficiency, and innovation. One important issue not addressed in this version of the draft is evaluation of the effect on patient access to care. While the quality measurement component of the VBP proposal will, in theory, help ensure that patient outcomes remain steady or improve under the new payment model, another important consideration is how to monitor the effect of the new models on patient access to care. In a system that ties reimbursement to patient outcomes, “cherry-picking” of patients who minimize professionals’ financial risk (avoiding patients who may elevate risk) becomes a possibility. ASN is not suggesting that payments not be tied to patient outcomes, but encourages the Committees to consider including language mandating that the

Secretary monitor to assess changes in patient access to care under any new payment system in as close to real time as possible.

Thank you again for your time and consideration. The society's members are committed to providing the best possible care for patients with kidney disease and believe that a permanent, sound payment system is a necessity to ensure that every patient has access to the care they need. The Committee's discussion draft is an important step in that direction, and ASN welcomes the opportunity to continue to collaborate with the Committees and Congress to help address the current SGR situation. The society believes that many steps remain in developing the best possible payment system, but stands ready to discuss any of recommendations for your consideration offered several in this letter. To discuss ASN's comments or to obtain any additional information, please contact ASN Manager of Policy and Government Affairs Rachel N. Meyer at rmeyer@asn-online.org or at (202) 640-4659.

Sincerely,

A handwritten signature in cursive script that reads "Sharon M. Moe".

Sharon M. Moe, MD, FASN
President

Cc: Members, Senate Finance Committee
Members, House Ways and Means Committee