

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-5401**

April 13, 2009

The Honorable Henry A. Waxman  
Chairman, Committee on Energy and  
Commerce  
2125 Rayburn House Office Building

The Honorable Joe Barton  
Ranking Member, Committee on  
Energy and Commerce  
2322A Rayburn House Office Building

The Honorable Frank Pallone  
Chairman, Committee on Energy and  
Commerce, Subcommittee on Health  
2125 Rayburn House Office Building

The Honorable Nathan Deal  
Ranking Member, Committee on  
Energy and Commerce, Subcommittee  
on Health  
2322A Rayburn House Office Building

Dear Chairman Waxman, Ranking Member Barton, Chairman Pallone, and Ranking Member Deal:

In Puerto Rico, traditional fee-for-service Medicare is the primary payer for approximately 57% of the renal replacement therapy treatments (renal dialysis), or approximately 2,400 beneficiaries in an average month. On its face, the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) offered a slight increase in the amount of reimbursement for renal dialysis, and the Medicare Payment Advisory Commission has reported that Medicare margins are generally positive in this market segment.<sup>1</sup> In Puerto Rico, however, dialysis providers have been faced with a much different reality. It is my understanding that over the last two years, Island providers have seen an \$8 million reduction in Medicare reimbursements.

The problem is rooted in the fact that, after the passage of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003, the Centers for Medicare and Medicaid (CMS) imposed a phasing out of the wage index floor that applies to reimbursement for dialysis services. Several years ago, the wage index floor was set at 0.9. CMS gradually reduced this floor and for calendar year 2009 the floor is set at

<sup>1</sup> MedPac January 8, 2009 Report "Outpatient dialysis services: Assessment of payment adequacy."

0.7397.<sup>2</sup> The rationale behind a gradual floor reduction is to ensure continued patient access to dialysis in low wage index value areas.

Hospital wage index values are used for dialysis treatment reimbursement calculations. Puerto Rico has the lowest hospital wage index values of any jurisdiction in the United States. CMS uses four-year-old hospital cost report data in order to calculate current index values. Thus, to calculate the calendar year 2009 value, CMS used data from 2005 cost reports.<sup>3</sup> In Puerto Rico, this method of calculation has significant negative implications, since the method has no mechanism to reflect the imposition of germane mandatory minimum wage laws. In 2005, the government of Puerto Rico enacted a minimum wage law for nurses employed in the private sector. The three-year implementation of that law began in 2006 and recently concluded. Over these last three years, the minimum hourly wage for registered nurses on the Island increased by about \$8.50 and, for 2009, the minimum hourly wage for a registered nurse on the Island is \$14.42 per hour (not including overhead and benefits).

Although it appears that CMS would like to ensure that Medicare patients in Puerto Rico receive uninterrupted access to dialysis care, it insists that it does not have discretion under current law to reverse negative payment trends. Providers in most other jurisdictions are receiving increases in dialysis payments during this calendar year and, unlike providers in Puerto Rico, are likely offering traditional fee-for-service Medicare beneficiaries renal dialysis services without generating operating losses. Regarding CMS's claim that it lacks discretion to reverse the negative payment trends in Puerto Rico, I would note that there was no statutory directive from Congress to eliminate the floor.<sup>4</sup> Therefore, it would seem that one viable alternative is for CMS to rescind or adjust (for CYs 2008 and 2009) the gradual floor reduction policy so that providers in Puerto Rico are not negatively affected. However, efforts undertaken at the CMS level in 2008 to have the regulation changed were not effective.

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<sup>2</sup> The Final Rule was published in the November 19, 2008 issue of the Federal Register. Page 69925 contains a table reflecting the impact of the CY 2009 payment changes. It shows that Puerto Rico suffered an overall negative impact of -4.1%, the largest negative effect in any jurisdiction.

<sup>3</sup> All urban and rural locales in Puerto Rico have assigned values in the .5 range.

<sup>4</sup>Section 623(d) of MMA directed the Secretary to establish a basic case-mix adjusted composite rate for renal dialysis facility services. As part of that payment system the Secretary "shall adjust the payment rates under such a system by a geographic index as the Secretary determines to be appropriate. if the Secretary applies a geographic index under this paragraph that differs from the index applied under paragraph (7), the Secretary shall phase in the application of the index under this paragraph over a multiyear period." This provision is now included in the Social Security Act as 1881(b)(12) [the reference in the MMA to paragraph (7) refers to 1881(b)(7)].

If CMS's hands are in fact tied, we suggest that legislation be introduced that would reverse the effect of the large negative update to the dialysis services reimbursement system in Puerto Rico. For example, Congress could:

1. Enact special legislation to update the Puerto Rico hospital wage index so that prospective calculations reflect the mandatory minimum wages for nurses.
2. Enact legislation to establish a wage index floor for Puerto Rico-based providers on a temporary basis until the 2011 payment changes take effect.
3. Enact legislation on a one-time exception basis, using a block grant mechanism, similar to that used after Hurricane Katrina to assist hospitals that needed additional funding to recruit staff and provide additional compensation that would have been lost if the traditional wage index formula had been applied.

I thank you in advance for your attention to this important issue. My staff and I are at your disposal should you require additional information. John Laufer in my office (5-5029) is a good first point of contact. I do hope we can find a solution to this problem.

Sincerely,



Pedro R. Pierluisi  
Member of Congress

cc: James T. Kerr, CMS, Regional Administrator, Region II  
The Honorable Charles B. Rangel, Chairman, Committee on Ways and Means  
The Honorable Dave Camp, Ranking Member, Committee on Ways and Means  
The Honorable Pete Stark, Chairman, Committee on Ways and Means,  
Subcommittee on Health  
The Honorable Wally Herger, Ranking Member, Committee on Ways and  
Means, Subcommittee on Health