United States Senate

WASHINGTON, DC 20510

December 6, 2006

The Honorable Leslie V. Norwalk Acting Administrator Centers for Medicare and Medicaid Services 200 Independence Avenue, S.W. Washington, DC 20201

Dear Acting Administrator Norwalk:

We are writing to strongly urge you to extend the current ability of independent laboratories to bill Medicare directly for the technical component (TC) of physician pathology services provided to hospital patients. The statutory provision requiring the Centers for Medicare and Medicaid Services (CMS) to permit such billing arrangements to continue is scheduled to expire on December 31, 2006. We believe this extension is critical to ensure that hospitals and independent laboratories have the stability they need to maintain quality medical testing vital to seniors, especially in rural areas.

As part of the 2000 physician payment rule, your agency eliminated payment to independent laboratories for the TC of physician pathology services provided to hospital patients. However, since 2001, and most recently in 2003 as part of the *Medicare Modernization Act*, Congress, through a "grandfathering" provision, has acted to limit the adverse effects of this payment change. This has allowed hospitals that have long relied on independent laboratories for physician pathology services to continue to do so without disruption, increased costs and additional administrative burdens.

Congress has repeatedly expressed its desire to continue this grandfathering policy. We have introduced the *Physician Pathology Services Continuity Act of 2006*, S. 3609, which would make the policy permanent. An identical bill, H.R. 6188, has been introduced in the House by Representatives Kenny Hulshof (R-MO) and John Tanner (D-TN). However, given the short time remaining this session, Congress may not have an opportunity to take final action on this legislation before adjournment. Allowing the current grandfathering policy to expire before Congress has had a chance to act would unfairly penalize hospitals and laboratories that have had long-standing arrangements to serve patients in their communities. Moreover, considerable and unnecessary cost and confusion would result if it is allowed to lapse and Congress subsequently acts to restore it. An extension is essential to provide continuity of care and preserve access to critical surgical services.

We believe there is precedent and justification for administrative action. CMS extended this provision administratively for services furnished in 2003 (through Transmittal B-03-001, Change Request 2530, published on January 17, 2003) and 2004 (through Transmittal 34, One Time Notification, Change Request 3028, published on December 24, 2003). Also, development of the hospital PPS systems and CMS' guidance with respect to physician pathology TC costs show the outsourced TC costs have never been included in the inpatient diagnosis related groups (DRGs). If the grandfathering provision is allowed to expire, these increased costs that hospitals will bear will never be compensated through the regular budget neutral re-weighting of hospital DRGs.

Again, we respectfully request that you extend this provision.

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