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March 3, 2008

The Honorable Max Baucus
219 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairmen Baucus:

On behalf of the millions of patients we serve, National Patient Advocate Foundation (NPAF) urges you to ensure that Medicare beneficiaries have access to necessary therapies administered in hospital outpatient departments (HOPDs). NPAF is proud to support the Association of Community Cancer Centers call for Congress to enact legislation that ensures that drugs administered in HOPDs are reimbursed at no less a rate than drugs administered in physician's private offices.

NPAF is a non-profit foundation dedicated to improving access to healthcare services through policy reform. The advocacy activities of NPAF are informed and represent the experience of patients who receive counseling and case management services from our companion organization, Patient Advocate Foundation (PAF). Last year, PAF received approximately 6.8 million contacts for information or service from patients throughout the United States seeking assistance for access to care issues resulting from diagnoses of a chronic, debilitating or life-threatening disease. Of those, 44,572 became full patient cases involving communications made by PAF staff on behalf of a patient in order to reach positive resolution.

NPAF is dedicated to ensuring patients have continued access to drugs when they are fighting chronic, life-threatening and debilitating illnesses. When the Centers for Medicare & Medicaid Services (CMS) issued its final rule on the hospital outpatient prospective payment system (HOPPS) for 2008, the payment rates for drugs decreased to average sales price (ASP) plus 5% effective January 1, 2008. This decrease in reimbursement rate is especially troubling for patients who are unable to receive care in a physician office. As more and more physicians in rural communities are being forced to make the difficult decision to stop accepting new Medicare beneficiaries because of decreased reimbursement, an increasing number of patients are seeking treatment in HOPDs.

Annual survey data from the American Hospital Association depicts a trend in the number of hospital closures; since 1995 hospital closures have continued to increase on an annual basis. In recent years, rural hospitals have seen a more significant increase in the number of hospital closures compared to urban hospitals. The impact of hospital closures on rural communities has been documented as having detrimental effects not only on patient access to care, but also on the local economies. NPAF is concerned some hospitals, particularly those in rural areas where costs typically run higher or those that

serve as safety net providers simply will not be able to continue offering outpatient chemotherapy and other services under the Final Rule. Others may have to limit the availability of certain more innovative and costly cancer treatments on their formularies. Still others may be forced to offer certain therapies only on an inpatient basis.

HOPDs are an important part of the cancer infrastructure because some patients have complications and co-morbidities, need cutting-edge therapies, or require long or complex treatment regimens that cannot be administered during normal business hours in a physician office.

The recent CMS final rule which included an additional reimbursement cut for drugs administered in HOPDs will only exacerbate the problem that many hospitals are already facing. The Office of Inspector General has found that many older, urban cities such as Detroit, New York City and Philadelphia have already begun to see that many of their hospitals are being forced to close because Medicare and Medicaid reimbursement is insufficient. Because we know that reimbursement and patient access are inextricably linked, NPAF is concerned about the access implications for Medicare beneficiaries diagnosed with cancer or other debilitating diseases. A 2006 survey conducted by the Association of Community Cancer Centers (ACCC) in response to CMS' proposed rule to reduce Medicare payments for separately billable drugs to ASP + 5% in 2007 found that hospital outpatient payments rates would be insufficient to cover costs associated with five of the eight common oncology therapies evaluated.

According to testimony heard at its March and September 2007 meetings, the Ambulatory Payment Classification (APC) Panel recommended that CMS continue paying hospital infusion centers at ASP + 6% for all separately payable drugs. The APC Panel again heard testimony at its September 2007 meeting that the current Medicare payment of ASP + 6% is insufficient to cover the acquisition costs (much less the handling costs) for approximately 59% of the separately payable drugs on many hospital formularies. This is not surprising, since drug costs have continued to rise and the flawed nature of the ASP metric has not been remedied over the past year. Given that the current rate is inadequate, the APC Panel again recommended that CMS maintain reimbursement at ASP + 6% to avoid placing hospitals under even great financial strain.

We urge Congress to intervene on behalf of patients. Specifically, we ask you to enact legislation that ensures that drugs administered in HOPDs are reimbursed no less than drugs administered in physician offices. Thank you for your attention to this critical matter. Please do not hesitate to contact me or Jim Gottlieb at 202-347-8009 if you have any questions.

Sincerely,



Nancy Davenport-Ennis
President & CEO

Jim Gottlieb
Executive Vice President of Government Affairs