

## Commentary

# Medicare cuts and ESA restrictions

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**B**efore its December recess, Congress has a full schedule of legislation to tackle. Of particular interest to the oncology community are important bills that, if passed, would halt the cuts in Medicare reimbursement and roll back restrictions on the use of erythropoiesis-stimulating agents (ESAs) in cancer treatment.

In response to an outcry from community cancer clinics, Congressman Artur Davis (D-AL), sponsored *The Community Cancer Care Preservation Act of 2007* (H.R. 1190). The legislation was cosponsored by Congressman Jim Ramstad (R-MN). As of press time, the bill has nearly 80 Congressional cosponsors.

H.R. 1190 is designed to fix key aspects of Medicare's reimbursement for drugs and services. Specifically, the legislation would:

- Eliminate "prompt payment" discounts from the calculation of average selling price (ASP) so that ASP is not artificially lowered by finance discounts between manufacturers and wholesalers;
- Remove the 6-month lag in ASP so that community cancer clinics are not unfairly subsidizing the Medicare system for manufacturer price increases;
- Create payment codes for essential components of quality cancer care that Medicare does not currently reimburse (specifically, treatment planning and pharmacy facilities);
- Restore appropriate payment for the first hour and subsequent hours of cancer drug administration.

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Before this year's summer recess, a companion bill to H.R. 1190 was introduced in the Senate by Arlen Specter (R-PA), a cancer survivor. The *Community Cancer Care Preservation Act of 2007*, S. 1750, was cosponsored by Senator Specter's Democratic colleague from Pennsylvania, Robert P. Casey, Jr.

With increasing support from cosponsors of both the House and Senate bills, the most likely scenario is that key provisions from the bills will be included in broader legislation. These provisions could accompany a legislative fix of the scheduled 9.9% cut in 2008 for payment of physician-related Medicare services. This fix also has support in Congress.

The Community Oncology Alliance (COA) and staff members of community cancer clinics have been meeting with their representatives to solicit cosponsorship for both bills. Continuing this dialogue is critical to demonstrate widespread support for fixing the Medicare cuts to cancer care.

### The ESA issue

In addition to these and several other bills addressing cancer care issues, a joint resolution of disapproval—H.J. Res. 54—has been introduced relating to the national coverage determination issued by the Centers for Medicare & Medicaid Services (CMS) restricting the use of ESAs.

The resolution of disapproval was introduced in the House by Congresswoman Anna Eshoo (D-CA) and Congressman Mike Rogers (R-MI). According to CMS, the ESA rule was

issued because "Emerging safety concerns derived from clinical trials in several cancer and non-cancer populations prompted CMS to review its coverage of ESAs." CMS "determined that there is sufficient evidence to conclude that ESA treatment is not reasonable and necessary for (Medicare) beneficiaries with certain clinical conditions, either because of a deleterious effect of the ESA on their underlying disease or because the underlying disease increases their risk of adverse effects related to ESA use."

By the time we go to press with this article, there will likely be a companion resolution in the Senate. These resolutions act just like legislation in that they can be cosponsored, which COA and others in the cancer community will be pursuing. If passed, a Congressional resolution would effectively nullify the Medicare ruling as having "no force or effect." Implementation of the ruling would then be halted.

There is widespread support in Congress for reconsidering the Medicare ESA rule. Recently, 52 Senators and 235 members of the House signed letters to Medicare expressing significant concerns regarding the ESA ruling. They signed these letters because the cancer community stressed the problems inherent in the ruling, its interference with oncologist decision-making, and the suboptimal treatment for seniors covered by Medicare that would result.

For those interested in preserving the hallmarks of community cancer care—namely, quality, accessibility, and affordability—there is ample opportunity during this fall session of Congress to reach out to your representatives in the House and Senate, urging them to cosponsor important cancer care legislation, starting with S. 1750, H.R. 1190, and H.J. Res. 54. Members of Congress will act if they hear from their constituents in the cancer community.

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