March 18, 2014

The Honorable Fred Upton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Henry Waxman
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Ranking Member Waxman:

The undersigned organizations urge you to preserve the in-office ancillary services exception (IOASE) to the "Stark" law and reject the Administration's proposal to restrict the IOASE for advanced imaging, radiation therapy, anatomic pathology and physical therapy. There is widespread agreement that improving the U.S. healthcare system will require more care coordination, not less. The IOASE recognizes that referral within a group practice promotes continuity of care in a setting that is lower cost and more convenient to the patient.

As Congress continues to emphasize the need for coordinated care models, it is important that clinical integration and integrity are preserved. Ancillary services are essential tools used on a daily basis by practices seeking to provide comprehensive patient-centered services. Limiting the IOASE would force patients to receive ancillary services in a new and unfamiliar setting, increase inefficiencies, present significant barriers to appropriate screenings and treatments, and make health care both less accessible and less affordable. In addition, it would impede care coordination and interfere with the physician-patient relationship.

Both the Government Accountability Office and the Medicare Payment Advisory Commission have examined this issue in depth and neither has recommended restricting the IOASE. Indeed, in its June 2011 Report to Congress, MedPAC recommended against limiting the Stark law exception for ancillary services, citing potential "unintended consequences, such as inhibiting the development of organizations that integrate and coordinate care within a physician practice."

Legislatively prohibiting integrated practices from offering these ancillary services will only drive this care into the more expensive hospital setting. By statute, Medicare payments for advanced imaging in hospitals must be the same or higher than in physician offices. Similar payment discrepancies exist for radiation therapy, where courses of treatment for diseases such as prostate cancer are substantially more expensive in the hospital setting than in the physician office.

In addition, utilization of these services has been flat or declining:

- Both volume and intensity growth for advanced imaging in the physician office has declined substantially since 2007 and there was actually negative growth in the physician office in 2012.[i]

- In its report on radiation therapy, GAO noted that: "(a)fter 2007, the rapid increase in prostate-cancer related IMRT services performed by self-referring groups coincided with declines in these services within hospital outpatient departments and among non-self-referring groups. Overall utilization of prostate cancer-related IMRT services therefore remained relatively flat across these settings."[ii]

- Medicare spending for outpatient therapy in physician offices actually decreased from 9 percent of total outpatient therapy in 2002 to 4 percent in 2011.[iii]

- A recent study on in-house pathology utilization of prostate biopsies that reviewed 4.2 million specimens between 2005 and 2011 demonstrated no significant difference in both the positive biopsy rate and utilization trends between physician-owned laboratories and a national reference lab.[iv]

More troubling, restricting the IOASE will accelerate the consolidation trend of hospital acquisition of physician practices. A recent *New York Times* article reported that 64 percent of job offers filled through Merit Hawkins, one of the nation's leading physician placement firms, involved hospital employment, compared to 11 percent in 2004.[v] Reducing the viability of the full spectrum of care being delivered in an independent outpatient setting will most likely centralize care around a few dominant hospital systems, which will undermine competition and in turn raise costs to the entire health care system over the long-term.

Congress and the Department of Health and Human Services have heavily regulated the provision of ancillary services performed in physicians' offices, through the Stark law and elsewhere. Physicians and group practices relying on this exception must meet complex billing, supervision, and location requirements. In addition, the bipartisan, bicameral legislation to repeal SGR (H.R. 4015/S. 2000) includes a provision establishing "appropriate use criteria" (AUC) for advanced medical imaging, which is the proper way to address potential inappropriate utilization across all settings of care. We applaud the development, adoption and use of physician-developed, peer reviewed AUC for advanced imaging and other ancillary services.

Our organizations seek to protect Medicare beneficiaries and taxpayers alike by providing high quality, ethical care in a setting that benefits the patient and facilitates care coordination. We therefore urge you to preserve the IOASE contained in the "Stark" law.

Sincerely,

American Academy of Dermatology Association
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Otolaryngology—Head and Neck Surgery
American Academy of Physical Medicine and Rehabilitation
American Association of Clinical Urologists
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American College of Cardiology
American College of Gastroenterology
American College of Mohs Surgery
American College of Rheumatology
American College of Surgeons
American Gastroenterological Association
American Medical Association
American Society for Gastrointestinal Endoscopy
American Society for Mohs Surgery
American Society of Dermatologic Surgery Association
American Society of Neuroimaging
American Society of Nuclear Cardiology
American Urological Association
Association of Black Cardiologists
Brain Injury Association of America
Cardiology Advocacy Alliance
Digestive Health Physicians Association
LUGPA
Medical Group Management Association
National Association of Spine Specialists
Society for Cardiovascular Angiography and Interventions
Society for Vascular Surgery
The US Oncology Network

cc: House Ways & Means Members

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[i] AMA, Economic and Health Policy Research Analysies of annual Medicare Physician/Supplier Procedure Summary Files.
[ii] GAO report 13-525, p. 11
[iii] MedPAC Medicare Payment Basics: Outpatient Therapy Services Payment System, Oct 2012, p. 1. MedPAC Medicare Basics: Outpatient Therapy Services, Dec 2005, p. 3.

[iv] Kapoor DA, Bostwick, MD, Olsson CA. Utilization trends and positive biopsy rates for prostate biopsies in the U.S. 2005-2011. Reviews in Urology Vol. 15 No. 4
[v] "Apprehensive, Many Doctors Shift Jobs with Salaries" *The New York Times*, February 14, 2014