Sequestration Cuts
Community Oncology Alliance Position Statement

Community Oncology Alliance Position
The Community Oncology Alliance (COA) strongly opposes sequestration cuts to reimbursement for all Medicare Part B drugs purchased to treat cancer. By applying the sequestration cut to the cost of the drug and the six percent administrative add-on, CMS has effectively lowered the reimbursement for the drug, placing a significant number of Part B drugs underwater to the clinics providing them. This is beyond the scope of CMS’ authority and usurps the role, set by statute, of Congress to set drug reimbursement rates.

Background
Medicare Modernization Act (MMA)
In 2003, Congress enacted the largest single overhaul of Medicare in the public health program’s history with the Medicare Prescription Drug, Improvement, and Modernization Act, also commonly called the Medicare Modernization Act or MMA. This legislation changed the reimbursement rate for Medicare Part B drugs, which are typically injectable medications such as chemotherapy and supportive care drugs, administered under a medical provider’s supervision. The new reimbursement rate became Average Sales Price (ASP) of the drug plus six percent.¹

The six percent add-on was intended to cover the costs associated with the procurement, storage, inventory, preparation, and waste disposal for these volatile and highly toxic drugs. The reimbursement rate was deliberately set to be revenue-neutral.

Budget Control Act of 2011
Since the 2005 adoption of ASP plus six percent as the Medicare drug reimbursement formula, a subsequent and quite significant change in Part B drug reimbursement has become part of Medicare policy. The Budget Control Act of 2011 mandated a two percent sequestration cut to Medicare reimbursement, which the Centers for Medicare & Medicaid Services (CMS) applied, COA believes, inappropriately.² The sequestration cut was not applied to the six percent add-on only but rather to the entire ASP plus six percent, serving to decrease the Part B drug reimbursement for the actual acquisition cost of chemotherapy drugs and their administration. The drug costs and administrative fees associated with dispensing cancer drugs remained unchanged as reimbursement declined,
resulting in physicians being under-reimbursed for their acquisition costs on many chemotherapy drugs.

While Congress did approve the application of sequestration cuts to Medicare Part B drug reimbursement, it was the determination by CMS alone to apply the sequestration cut to the entire ASP plus six percent amount, the cost of the drug, as well as the administrative add-on fee. By doing so, CMS changed the reimbursement rate for every Medicare Part B drug, in violation of MMA, which placed the authority to determine reimbursement rates with Congress alone.

**Lawsuit**

COA filed a lawsuit to stop the application of the Medicare sequester cut to Part B drug reimbursement. The lawsuit notes that the application by the United States Department of Health and Human Services (HHS) and the White House Office of Management and Budget of the sequester cut to Part B drug reimbursement is illegal, unconstitutional, has harmed patients, decimated the nation's independent community cancer care system, and has cost seniors and taxpayers billions.

The suit was filed in May 2018 in the U.S. District Court for the District of Columbia. As of September 2019, it rests in the U.S. Court of Appeals for the District of Columbia Circuit, pending further action.

**Summary**

COA opposes the manner in which the current sequester cut has been implemented and believes a sequester cut should be applied solely to the six percent add-on. Further, COA believes these actions by CMS are illegal and has filed suit to correct how sequestration cuts are applied.

According to a 2018 study published in the American Journal of Managed Care, 92 community oncology practices reported having lost $78 million in the 19-month study period ending March 2018 as a result of the ongoing Medicare sequester cut to reimbursement for Part B drugs. This amounts to practices losing an average of more than $847,000 each due to the sequester cut, which has driven an increase in the number of closings and rate of closure of community oncology practices in the United States. The study reported on just a sample of the nation's independent, community oncology practices, and thus only captures a very small snapshot of the losses.
The application of the sequester cut to cancer drug reimbursement, set up the nation's cancer care system for the closure or consolidation of independent community oncology practices, where the majority of Americans with cancer are treated. This has created access problems for patients as cancer care moves into the much more expensive hospital system, driving up costs for seniors with limited mobility and fixed incomes, as well as all taxpayers who fund Medicare.

**Date**
Approved by the Board of Directors of COA on June 15, 2020.

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1 Medicare Part B Reimbursement of Prescription Drugs, HHS Office of the Assistant Secretary for Planning and Evaluation, June 2014.
4 The Financial Impact of the Sequester Cut to Medicare Part B Drug Reimbursement in Community Oncology, Lucio Gordan, MD, Evidence-Based Oncology, a publication of The American Journal of Managed Care, August 29, 2018.