

United States Senate

WASHINGTON, DC 20510

May 19, 2016

Dear Acting Administrator Slavitt:

As the Centers for Medicare and Medicaid Services (CMS) develops upcoming rulemaking for Section 603 of the Bipartisan Budget Act of 2015, “Treatment of off-campus outpatient departments of a provider”, we write to underscore the importance of including flexibilities to enable hospitals to continue to serve patients in these settings as well as provide predictability for the hospital field.

The Bipartisan Budget Act of 2015 establishes “site-neutral” payment reductions for new off-campus hospital outpatient departments (HOPDs). These “new” HOPDs are defined as those that start billing for Medicare outpatient services under the outpatient prospective payment system (OPPS) after the date of enactment, November 2, 2015. Beginning January 1, 2017, services provided in these “new” HOPDs will no longer be covered as OPPS services, rather, they will be covered under other Medicare Part B payment systems: the Medicare physician fee schedule, the clinical laboratory fee schedule, and the ambulatory surgery center payment system.

As you plan for implementation of Section 603, we urge you to include flexibilities to enable hospitals to continue to serve patients in these settings. Specifically, we encourage you to include flexibility for those additional services provided at a dedicated emergency department (DED), relocation or rebuilding for already existing HOPDs, change of ownership, and needed expansion of services and personnel to meet patient care needs of a community.

Dedicated Emergency Department (DED)

Section 603 refers to the Emergency Medical Treatment and Labor Act (EMTALA) regulations in 42 CFR 489.24(b) in defining a DED, which states in the definition of a DED: “provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis...”. This recognizes that hospital emergency departments provide a wide range of services, and ancillary services provided by a DED are needed to diagnose and treat patients. Therefore, we believe that when a facility meets the definition of a DED, none of the services furnished in that facility should be subject to the site-neutral payment reductions.

Relocation or Rebuilding

Existing HOPDs may need to relocate for a variety of reasons: being located on an earthquake fault line or a revised flood plain and needing to come up to building codes, having a lease expire, becoming obsolete or damaged, becoming too small because of population shifts and increased patient loads, or any number of other circumstances. The need to relocate or rebuild for these types of reasons should not trigger site-neutral payment reductions under Section 603.

Change in Ownership

The only criteria for existing HOPDs (rather than being designated as “new”) is that the facility was billing under the OPSS prior to November 2, 2015 – a change of ownership, such as one hospital system acquiring the existing HOPD from a second hospital, is not separately discussed. We believe a change in ownership should not cause an HOPD to lose its status as an existing HOPD.

Types of Services

Unlike previous legislation, nothing in the law is intended to preclude existing off-campus HOPDs from changing or expanding the types of outpatient services they provide to patients while still receiving Medicare payment at the OPSS rate. The only criteria that defines an existing HOPD is billing under the OPSS prior to November 2, 2015. We urge CMS to protect HOPDs ability to offer these services.

Definition of Campus

Current regulations define “on-campus” as buildings within 250 yards of the main buildings of the hospital or other buildings that the CMS regional office determines, on a case-by-case basis, to be part of the hospital campus. Emphasizing the discretion of regional offices is important, because a consistently strict interpretation of the 250 yard criterion would distinctly disadvantage hospitals that are adjacent to barriers that could prevent on-campus expansion, such as rivers, wetlands, highways, and those located in densely populated urban areas or those co-located on land-locked university campuses. A narrow and strict interpretation of the 250 yard rule could result in designating sites as off-campus, subject to site neutral payment reductions, despite a clear proximity and integration with the hospital’s campus. We urge CMS to instruct its regional offices to use the rule of “reasonable proximity” when making on-campus determinations and evaluate on-campus status within the context of the hospital and its surrounding geography.

As the healthcare system continues to transform, we believe it is critically important for patients to be able to access care and services at the appropriate site of care in their community. We appreciate your consideration of these concerns and we look forward to working with you to address these through the upcoming rulemaking process.

Sincerely,



Rob Portman
United States Senator



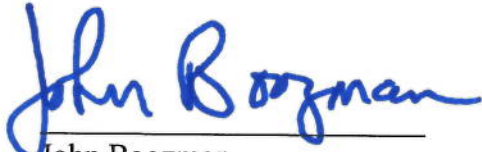
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Mark Kirk
United States Senator




Sherrod Brown
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John Boozman
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Robert P. Casey, Jr.
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United States Senator



Richard J. Durbin
United States Senator



M. Michael Rounds
United States Senator



Debbie Stabenow
United States Senator



Richard Burr
United States Senator



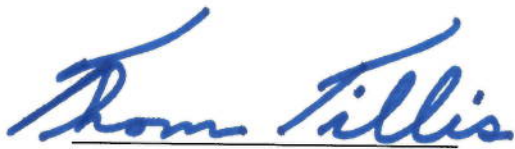
Jeanne Shaheen
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Kelly A. Ayotte
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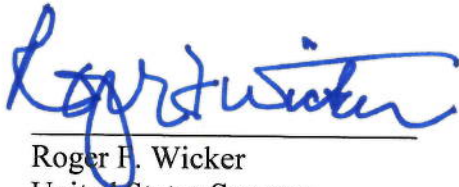
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United States Senator



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United States Senator



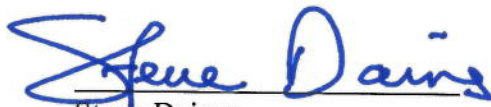
Kirsten Gillibrand
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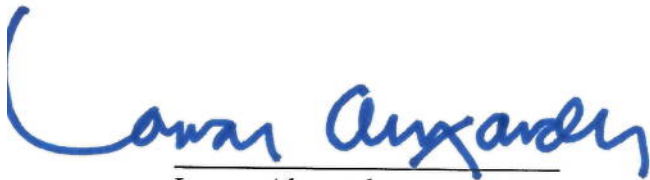
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United States Senator



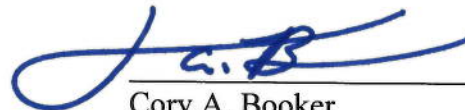
Steve Daines
United States Senator



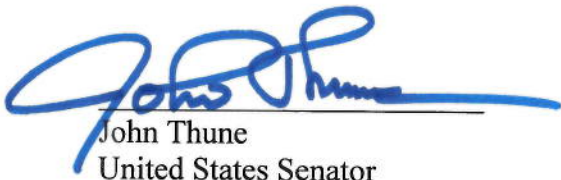
Amy Klobuchar
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Lamar Alexander
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Cory A. Booker
United States Senator



John Thune
United States Senator



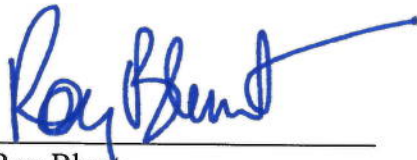
Joe Donnelly
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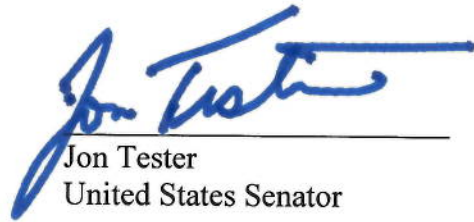
Jerry Moran
United States Senator



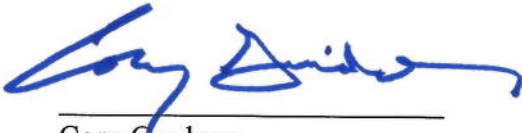
Tammy Baldwin
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Roy Blunt
United States Senator



Jon Tester
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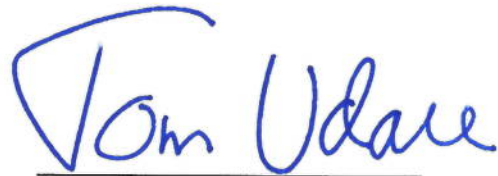
Cory Gardner
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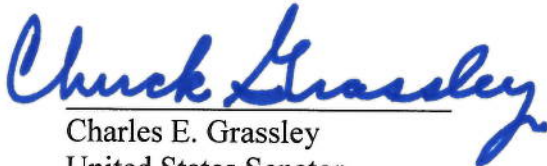
Maria Cantwell
United States Senator



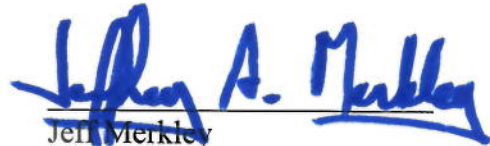
David Perdue
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Tom Udall
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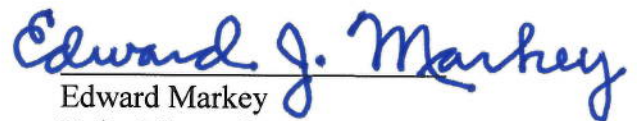
Charles E. Grassley
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Jeff Merkley
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John Hoeven
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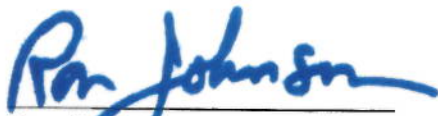
Edward Markey
United States Senator



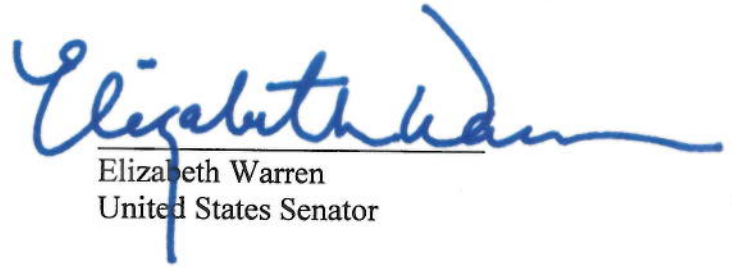
Thad Cochran
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Robert Menendez
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Ron Johnson
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Elizabeth Warren
United States Senator



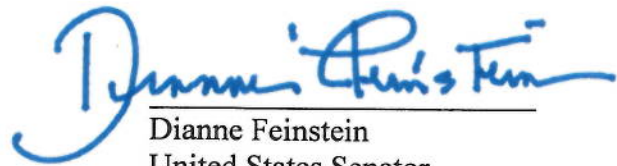
Susan Collins
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Brian Schatz
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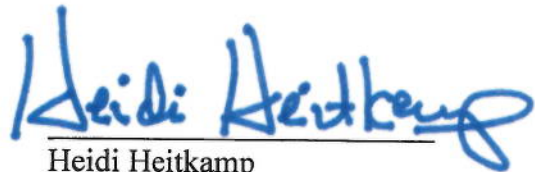
Dan Sullivan
United States Senator



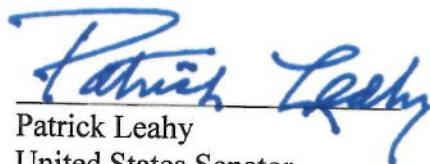
Dianne Feinstein
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Heidi Heitkamp
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Patrick Leahy
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Tom Carper
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Christopher Coons
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