ORIENT: Sequestration pain for cancer patients

Drug-payment cuts could jeopardize survival

By Jane M. Orient Thursday, March 28, 2013

White House(/topics/white-house/) tours may be the focus of attention, but the most brutal effect of sequestration may fall on cancer patients. The administration isn't mentioning this one.

As of April 1, the allowable charge for cancer chemotherapy drugs will be cut by 1.7 percent, so independent oncologists will not be able to charge enough to cover the cost of administering many expensive but lifesaving drugs. Hundreds of thousands of vulnerable patients could have their treatment disrupted.

This is happening under President Obama, who promised Americans that "if you like your doctor, you can keep your doctor." It's happening at the same time that advocates of the Obamacare Medicaid expansion are trotting out hard-luck stories of cancer patients who lose their insurance in the midst of treatment. Medicare(/topics/medicare/) patients, of course, aren't losing their insurance — just their ability to get the care they need from the doctor they trust.

Sequestration does not have to do this. The last time sequestration went into effect, 20 years ago under the Gramm-Rudman-Hollings Balanced Budget Act, the Medicare(/topics/medicare/) reimbursement was cut, but not the allowable charge. This meant that patients could still get their treatment, but had to come up with an additional 2 percent of the charge. Supplemental insurance may have taken care of it. Or if the patient couldn't afford it, doctors might have been able to waive the charge in some cases and still stay in business.Sequestration might not save any money in this instance, as all chemotherapy may simply be driven into hospitals. Large institutions might be able to negotiate lower prices for drugs, but overall, care is far more expensive in hospitals, up to 10 times as much as in outpatient facilities. Third parties, including Medicare(/topics/medicare/) and Medicaid, often pay hospitals much more than independent physicians for exactly the same service.Does this make sense? Looking at the numbers, it probably doesn't — not yet. It does, however, help achieve the stated agenda of many "reformers" — getting rid of independent, fee-for-service physicians. Big institutions are much easier to control. Physicians who care about their individual patients are much less likely to go along with the agenda of hastening death instead of giving the patient every chance. Legislation being proposed in Texas makes this agenda perfectly clear: Hospitals want the right to impose denial-of-care directives, with immunity.Patients may love the idea of not having to worry about paying the bill for treatment. Do they, however, want the one sure way of eliminating the bill — eliminating the treatment? A little-known, ugly fact about Medicare(/topics/medicare/) , Medicaid, and indeed most managed-care plans is that they cut off the patients' options. If the insurer doesn't pay, or pays so little that no one will offer treatment, nobody is allowed to pay. No point in appealing to a rich uncle, taking out a loan, having a family member get another job, or holding a bake sale. If a Medicare (/topics/medicare/) -enrolled oncologist accepts an extra 1.7 percent, he could go to prison. If a managed -care provider accepts private payment from a plan enrollee for a "covered service" that the plan has ruled "inappropriate" in a particular patient's case, he is violating his provider contract, and his career could be ruined. It is not sequestration itself that could have a death-panel-like effect. It just triggers other mechanisms that do or will. These will increasingly have a dronelike impact on persons identified as risks to the public Treasury or optimum population health. The administration need not claim responsibility — as long as there are still doctors.

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American Society of Clinical Oncology

Sequestration: Frequently Asked Questions

What is sequestration and why is it an issue now?

Sequestration was established as part of the Budget Control Act of 2011 in order to reduce the federal budget deficit. In 2011 the country came close to surpassing its debt limit. Had Congress not acted, it would have led to a shutdown of the federal government and a potential downgrade of the United States' credit rating. Some members of Congress would not vote to raise the country's debt ceiling unless Congress and the Administration developed a plan to address the size of the federal deficit. The Budget Control Act of 2011 is the legislation that resulted from this negotiation. The Budget Control Act established a Joint Select Committee on Deficit Reduction to identify $1.5 trillion in savings by the end of 2011. The Committee failed to do so, and automatic mandatory reductions to the federal budget were to begin on January 2, 2013, but Congress took action to temporarily delay the implementation until March 1, 2013.

Specific requirements on how sequestration will impact different programs are outlined in the legislation. For example, sequestration will impact defense spending and non-defense discretionary spending (which includes NIH funding) at the same rate. There are exemptions provided for some programs, including Social Security, Medicaid, the Children's Health Insurance Program, and other programs for the low-income populations. Programs administered by the Department of Veteran's Affairs are also exempt.

How will sequestration impact Medicare?

The Budget Control Act of 2011 provides a special rule for Medicare, limiting sequestration to no more than 2% of Medicare spending, which is about $11 billion. Certain aspects of Medicare are protected from the scheduled reductions including benefits, Part D low-income subsidies, the Part D catastrophic subsidy and Qualified Individual Premiums. For Parts A and B of Medicare, reductions will be made to individual payments to providers, and are to be made at a uniform rate and are not to exceed 2%. For Parts C and D the reductions will be made to the monthly payments made to the administering private plans. Also, the legislation prohibits any changes from being made to the actual benefit structure.

Source: Spar, K. Budget "Sequestration" and Selected Program Exemptions and Special Rules. *Congressional Research Service.* August 2012.

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How will sequestration impact the National Institutes of Health and the Food and Drug Administration?

The NIH budget will be reduced by $1.6 billion in 2013, a cut of 5.1%. Dr. Collins, director of the NIH, recently estimated that 20,000 jobs nationwide could be lost. Hundreds of research projects may go unfunded, and current projects may have to be scaled back. The FDA budget is estimated to be reduced by $200 million, which is a cut of about 5%. This could slow the rate of new drug approvals and hamper the ability of the FDA to fulfill its regulatory duties. Both agencies will likely face continued reductions each year until 2021 to reach the tight budget caps required under the law.

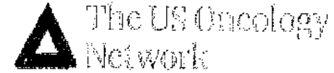
Is there any way to avoid sequestration?

Congress has the ability to change or cancel sequestration. Some members of Congress and the Administration have expressed serious concern about the impacts of sequestration and are working on plans to prevent the cuts from going into effect. However, there is no indication if a deal will be achieved in time to stop the cuts from going into effect.

As it stands, the cuts to Medicare will put greater strain on physicians already struggling to stay financially viable in the current system, and the cuts to the NIH and FDA will seriously slow advancements in new cancer treatments. In order to get Congress to stop these cuts, it is critical to reach out to your Members of Congress and ask them to take action.

ASCO is already communicating this message to the Hill, and encourages you to do the same. Visit the ACT Network to learn more about how you can take action to support the efforts to prevent these cuts from going into effect. ASCO will also be providing updates as the situation develops on its Policy News Website, ASCO in Action. If you have any questions, please contact ASCO's Cancer Policy and Clinical Affairs Department at 571-483-1670 or publicpolicy@asco.org.

Source: Spar, K. Budget "Sequestration" and Selected Program Exemptions and Special Rules. *Congressional Research Service.* August 2012.



Sequester Imperils Cancer Care Delivery System Already in Crisis
Congress Must Act NOW!

Sequestration will reduce Medicare spending by 2% percent (effective April 1, 2013); however, it will disproportionately cut payments for critical cancer drugs, causing many to be reimbursed less than cost. This will cause additional cancer clinics to close, further consolidating the nation's cancer care delivery system and resulting in patient access problems and higher costs for Medicare and seniors.

The Community Cancer Care Delivery System is Already Under Stress

- Despite studies indicating that community-based care lowers costs to patients and Medicare, a series of Medicare cuts to cancer care has destabilized the cancer care delivery system already under stress due to inadequate Medicare payment. Since 2008, more than 1,200 community cancer care centers have closed, consolidated, or reported financial problems, limiting patient access and driving up Medicare costs by forcing patients to costlier care settings.
- When community cancer clinics are forced to close their doors, access to cancer care is compromised for cancer patients, especially vulnerable seniors covered by Medicare.

Sequestration Disproportionately Cuts Payment for Critical Cancer Drugs and Will Cause Increased Access Problems and Higher Costs

- Medicare Part B drugs will be hit harder by the sequester cuts than other services.
  - The current Medicare drug reimbursement rate of ASP + 6% does not adequately pay for the acquisition and related costs (e.g., storage, inventory, waste disposal) of life-sustaining cancer drugs; as a result, many critical cancer drugs are currently reimbursed below cost.
  - ASP + 6% is really closer to ASP + 4% today due to artificial lowering by the inclusion of manufacturer-to-distributor prompt pay discounts.
  - The sequester will reduce Medicare payment for cancer drugs to approximately ASP + 4% and in actuality closer to ASP + 2% (accounting for the prompt pay problem).
  - Many Medicare beneficiaries are unable to pay their 20% coinsurance on expensive therapies.

Sequestration Payment Cuts Will Directly Impact Patient Care

- More cancer clinics will likely limit their services or close altogether, further restricting access to care and forcing cancer patients to seek care in costlier, more distant settings.
- Further payment reductions for generic injectables risk causing new drug shortages.
- Without access to community cancer care, patients experience higher copayments; longer travel times and increased travel expenses; visits to multiple providers and locations for care and services; and delays seeking treatment even as cancer progresses.

Congress Must Act NOW to Mitigate the Impact of Sequestration Cuts to Cancer Care

- **Ask the White House and CMS to exempt Medicare Part B drugs from the sequester.**
  - Congress should carefully evaluate if the sequester legally applies to the Medicare Part B reimbursement rate of ASP + 6%, which is uniquely and specifically set in statute.
- **Please co-sponsor H.R. 800**, a bill introduced by Representatives Whitfield, Green, Nunes, Kind, DeGette, and 27 other original co-sponsors to remove manufacturer-to-distributor prompt pay discounts from the calculation of ASP. H.R. 800 will help mitigate these devastating cuts.

Our nation's unstable cancer care delivery system and patients fighting cancer need the help of Congress to stop any further cuts to cancer care.

March 13, 2013

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable John Boehner
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Majority Leader Reid, Minority Leader McConnell, Speaker Boehner and Minority Leader Pelosi:

Community-based cancer care, where until recently four out of five Americans with cancer were treated, is in serious crisis. The April 1 payment cut to Medicare mandated by sequestration further threatens to destabilize our nation's precarious cancer care delivery system. Representing America's cancer care providers, cancer patients, and other organizations and companies affiliated with the cancer care community, we urge you to reject Medicare cuts to life-sustaining anti-cancer drug and biologic therapies.

Over the past four and a half years, 241 community cancer clinic sites have closed and 442 practices (often with multiple clinic locations) are struggling financially. As community cancer clinics close their doors, access to cancer care is compromised for cancer patients, especially vulnerable seniors covered by Medicare. Additionally, 392 clinics have consolidated into the hospital, with consolidation driving up costs to cancer patients and payers.[1] According to recent studies by Milliman[2] and Avalere[3], cancer patients, Medicare, and private insurers pay substantially less for cancer care when chemotherapy is administered in the physician community cancer clinic setting. Unfortunately, this cancer care crisis will seriously worsen with the sequestration-mandated cuts to Medicare effective April 1 — access problems will multiply and costs will increase for both Medicare beneficiaries fighting cancer and taxpayers.

The Medicare Modernization Act of 2003 requires that all discounts and rebates be included in the calculation of Average Sales Price (ASP), the basis for Medicare drug reimbursement. The ASP formula mistakenly includes prompt pay discounts that pharmaceutical manufacturers extend to distributors for timely payment. This flaw artificially lowers Medicare payment for life-saving anti-cancer drugs, resulting in reimbursement below cost for many and eroding the viability of community cancer care. Even without the threat of sequestration payment cuts, 27 bipartisan members of Congress joined Representatives Whitfield, Green, Nunes, Kind, and DeGette as original co-sponsors of a bill (H.R. 800) to remove manufacturer-to-distributor prompt pay discounts from the calculation of ASP and provide some additional stability to the nation's currently unstable community cancer care delivery system.

In stark contrast to this supportive legislation, imposing additional Medicare payment cuts to cancer drugs at this time would be devastating to both community cancer clinics and their vulnerable patients. Without a correction to the flawed Medicare payment formula, numerous additional cancer clinics will limit services or close altogether, restricting access to care or forcing cancer patients to more costly providers of care. When patients have to travel outside their communities for care, it can often result in duplicative

[1] *Community Oncology Practice Impact Report*; Community Oncology Alliance, March, 2012
[2] *Site of Service Cost Differences for Medicare Patients Receiving Chemotherapy* Milliman, October, 2011
[3] *Total Cost of Cancer Care by Site of Service: Physician Office vs Outpatient Hospital* Avalere Health, March, 2012

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 1, 2013

The Honorable John A. Boehner
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed please find the Office of Management and Budget (OMB) Report to the Congress on the sequestration for fiscal year (FY) 2013 required by section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (the "Joint Committee sequestration"). This report provides calculations of the amounts and percentages by which various budgetary resources are required to be reduced, and a listing of the reductions required for each non-exempt budget account.

In August 2011, as part of the Budget Control Act of 2011 (BCA), bipartisan majorities in both the House of Representatives and Senate voted for sequestration as a mechanism to compel the Congress to act on deficit reduction. The threat of destructive across-the-board cuts under the BCA was intended to drive both sides to compromise. Yet, a year and a half has passed, and the Congress still has failed to enact balanced deficit reduction legislation that avoids sequestration.

As a result of the Congress's failure to act, the law requires the President to issue a sequestration order today canceling $85 billion in budgetary resources across the Federal Government for FY 2013. Specifically, OMB calculates that, over the course of the fiscal year, the sequestration requires a 7.8 percent reduction in non-exempt defense discretionary funding and a 5.0 percent reduction in non-exempt nondefense discretionary funding. The sequestration also requires reductions of 2.0 percent to Medicare, 5.1 percent to other non-exempt nondefense mandatory programs, and 7.9 percent to non-exempt defense mandatory programs.

Because these cuts must be achieved over only seven months instead of 12, the effective percentage reductions will be approximately 13 percent for non-exempt defense programs and 9 percent for non-exempt nondefense programs.

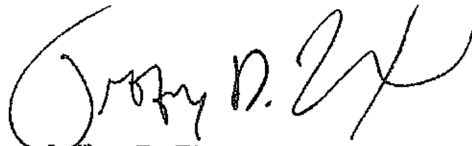
The cuts required by sequestration will be deeply destructive to national security, domestic investments, and core Government functions. While the Department of Defense will shift funds where possible to minimize the impact on war-fighting capabilities and critical military readiness, sequestration will result in a reduction in readiness of many non-deployed units, delays in investments in new equipment, cutbacks in equipment repairs and needed facilities maintenance, disruptions in military research and development efforts, significant reductions in weapons programs, and furloughs of most civilian employees for a significant

amount of time. Sequestration will also undermine nondefense investments vital to economic growth, threaten the safety and security of the American people, and cause severe harm to programs that benefit the middle class, seniors, and children. According to analysis by outside experts, sequestration would reduce real GDP growth for 2013 by 0.5 to 0.7 percentage points were it to continue for the rest of the calendar year.

The Joint Committee sequestration is a blunt and indiscriminate instrument. It was never intended to be implemented and does not represent a responsible way for our Nation to achieve deficit reduction.

On multiple occasions, the President has proposed comprehensive and balanced deficit reduction plans to avoid sequestration. The President and Congress, working together, have already reduced the deficit by $2.5 trillion. The President has been clear that he is willing to make tough choices to reach an agreement on further deficit reduction. The Administration continues to stand ready to work with the Congress to enact balanced deficit reduction legislation that replaces sequestration and puts the Nation on a sound long-term fiscal path.

Sincerely,



Jeffrey D. Zients
Deputy Director for Management

Enclosure

Identical Letter Sent to the President of the Senate