

July 18, 2002

The Honorable Thomas Scully  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Room 309-G, Hubert Humphrey Building  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Administrator Scully:

As Chief Counsel for Advocacy at the Small Business Administration, I want to extend to you my congratulations on the recent progress made by the Centers for Medicare and Medicaid Services (CMS) on several important issues of concern to small business. As a result of your leadership, and that of your staff, CMS and the Office of Advocacy have begun a dialogue that should contribute greatly to the fulfillment of the President's and Secretary Thompson's commitment to reducing the regulatory burden on small businesses.

I would like to commend CMS for its efforts in three specific areas: the recent collaboration between CMS and the Office of Advocacy; the quality of CMS's regulatory impact analysis of the 2003 revisions to the payment policies under the physician fee schedule; and the steps taken by CMS to alleviate some of the economic burden experienced by the portable x-ray and EKG providers.

## **Increased Collaboration between CMS and Advocacy**

Considerable progress has been made since May 16, 2002, when you and I made a joint commitment to the U.S. House Small Business Committee to increase the working relationship between our offices. You and I have met individually, and I met with your deputy, Ruben King-Shaw, Jr. Just last week, members of my staff joined me in another meeting with Mr. King-Shaw and other CMS senior staff to discuss ways in which our offices can institute productive collaboration on specific issues, such as improved industry data acquisition. We also laid the foundation for the possible use of regular meetings between CMS and Advocacy, and training for CMS staff by Advocacy to address how CMS can better implement the requirements of the Regulatory Flexibility Act.

I am confident that a continued dialogue between CMS and Advocacy will produce benefits on issues that are of concern to the small business health care community. I can assure you that Advocacy is dedicated to making the relationship work.

## **Improved Regulatory Impact Analysis of the Physician Fee Schedule**

Based on our review of the regulatory impact analysis published in the *Federal Register* on June 28, 2002, CMS should be commended for improvement in the rule's transparency in general. We noted a significant improvement in the discussion of alternatives and explanation of why CMS chose the rule's proposed requirements over the possible alternatives. CMS identified the medical specialties that will likely be affected by the revisions in the physician fee schedule and why. In general, it was clear

that CMS sought to improve many aspects of the analysis that Advocacy and industry have criticized in the past. We hope to see analyses of such quality in future rulemakings by CMS and other federal agencies.

### **Portable X-ray and EKG Industry**

I would be remiss if I did not acknowledge the steps CMS took to address the concerns raised by the portable x-ray and EKG industry. As you know from our joint appearance before the Small Business Committee on May 16, 2002, the payment policies under the previous physician fee schedules, if unchanged, would likely cause the demise of the industry. This would result in far reaching public health implications. These concerns were also raised in our comment letters to CMS.

Thank you for taking the concerns raised by Advocacy and the portable x-ray providers into consideration when drafting the 2003 revisions to the physician fee schedule. The 2003 revisions to the physician fee schedule not only provide the portable x-ray industry with an increase in reimbursement rates, reducing some of the adverse impacts on the providers, but CMS also identifies how the rulemaking is expected to impact the industry.

In addition, it is our understanding that CMS is working directly with the portable x-ray industry to address the inequities caused by the transportation codes and how they are reimbursed by the regional offices and local carriers. I commend you for opening those lines of communication and am encouraged that this development will result in a resolution that is acceptable to CMS and the industry.

While I am confident that we have many challenges ahead of us, I wanted to take this opportunity to thank you for the steps you have taken to facilitate this relationship. As a result of our shared commitment to ensuring that CMS and Advocacy work

cooperatively in an effort to identify and reduce the regulatory burdens for the small health care businesses, we will be in a position to build on our most recent successes. I look forward to working with you and your staff on an ongoing basis.

Sincerely,

Thomas M. Sullivan  
Chief Counsel for Advocacy

CC: Secretary Tommy Thompson, U.S. Department of Health and Human Services  
Chairman Donald Manzullo, Committee on Small Business, U.S. House of Representatives  
Representative Nydia Velazquez, Ranking Member, Committee on Small Business, U.S. House of Representatives  
Chairman John Kerry, Committee on Small Business & Entrepreneurship, U.S. Senate  
Senator Kit Bond, Ranking Member, Committee on Small Business & Entrepreneurship, U.S. Senate