

## Reimbursement for Cancer Treatment: Coverage of Off-Label Drug Indications

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### ABSTRACT

Approximately half of the uses of anticancer chemotherapy drugs are for indications other than those referenced in the United States Food and Drug Administration approved label. Some managed care organizations and private health insurance plans have declined to reimburse the cost of drugs used off-label to treat cancer on the ground that these uses are "experimental" or "investigational."

Cancer patients and their providers have experienced similar problems in the Medicare and Medicaid program. To a large extent, these issues have been addressed through legislation enacted in 1993 that requires coverage of medically appropriate cancer therapies including off-label uses recognized by established drug compendia and peer-reviewed literature. Congress has fashioned a system that has worked well, as reflected in improvements in cancer morbidity and mortality.

Now, however, after more than a decade of success, the system requires attention. This statement of policy from the American Society of Clinical Oncology encourages the Secretary of the United States Department of Health and Human Services to address these unmet needs in order to ensure that patients with cancer have access to clinically appropriate treatment, as reflected in timely compendia listings and reports of studies in the medical literature.

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### INTRODUCTION

Approximately half of the uses of anticancer chemotherapy drugs are for indications other than those referenced in the United States Food and Drug Administration approved label. The National Cancer Institute (NCI; Bethesda, MD) has stated that "[f]requently the standard of care for a particular type or stage of cancer involves the off-label use of one or more drugs."<sup>1</sup> The United States Food and Drug Administration has also acknowledged the potential benefits of off-label uses, noting that, "under certain circumstances, off-label uses of approved products are appropriate, rational, and accepted medical practice."<sup>2</sup>

Some managed care organizations and private health insurance plans have declined to reimburse the cost of drugs used off-label to treat cancer on the ground that these uses are "experimental" or "investigational." This practice has been condemned by the NCI and others. As the NCI Web site notes, "[s]ince drugs used off-label are often the standard of care for a particular kind of cancer, insurers' denial of coverage for such treatment means that patients may not receive what their doctors consider the best available treatment for their disease."<sup>1</sup>

Cancer patients and their providers have experienced similar problems in the Medicare and Medicaid program, leading to legislative provisions described in the following section. Notwithstanding

this corrective legislation, Medicare and Medicaid continue to be plagued by inappropriate denials of coverage for off-label uses of cancer drugs, primarily because contractors refuse to accept peer-reviewed clinical studies as support for coverage of such uses.

### LEGISLATIVE SOLUTIONS

In response to concerns about the quality of cancer care, Congress has required federal health care programs to cover medically appropriate off-label uses of drugs used to treat cancer. The first legislative remedy enacted by Congress, and the model for succeeding federal and state legislation, was a provision in the 1993 Omnibus Budget Reconciliation Act (OBRA) that required Medicare to cover off-label uses of anticancer drugs included in certain standard medical compendia. Section 1861(t)(2) of the Social Security Act compels coverage of indications approved by United States Food and Drug Administration as well as coverage of off-label indications supported in the American Hospital Formulary Service-Drug Information or in the US Pharmacopoeia-Drug Information. (The statute also references the American Medical Association Drug Evaluation, but that compendium has been merged into the US Pharmacopoeia-Drug Information.)

Under §1861(t)(2), the Secretary of Health and Human Services (HHS) may designate additional compendia as references for coverage of off-label uses of cancer drugs. The Secretary may also identify peer-reviewed medical journals for the purpose of providing guidance to Medicare contractors with respect to medically appropriate off-label uses of cancer drugs supported by results of clinical trials.

Congress subsequently adopted a compendia-based system for determining coverage of off-label uses of all drugs reimbursed by Medicaid. Under §1927(g)(1)(B)(i) and (k)(6), “medically accepted indication” is defined to include off-label uses referenced in the American Hospital Formulary Service-Drug Information, the US Pharmacopoeia-Drug Information, and the DRUGDEX Information System.

When Congress created a new Part D outpatient prescription drug benefit for Medicare beneficiaries in the Medicare Modernization Act of 2003, the compendia-based coverage determination was again the model. In §1860D-2(e) of the Social Security Act, coverage for off-label uses of drugs reimbursed under the new Part D is defined utilizing the three compendia referenced in the Medicaid law.

Thus, in a variety of legislative contexts, Congress has strongly endorsed the value of the recognized medical compendia for ascertaining the medical appropriateness of off-label uses of cancer drugs. Following the lead of the Congress, the overwhelming majority of state legislatures have enacted statutes requiring coverage of off-label uses of cancer drugs based on the compendia.

However, state laws are limited in their impact because they do not apply to so-called Employee Retirement Income Security Act (ERISA) health plans—those that are self-funded by employers—because of their protected status under federal law. The American Society of Clinical Oncology would support federal legislation to address this problem and make all private plans subject to the same requirements as Medicare.

### ADDITIONAL STEPS REQUIRED

While the compendia-based coverage approach has served the cause of quality cancer care by helping to ensure patient access to appropriate therapies, the system is threatened in several respects.

First, because the Medicare and Medicaid programs and state-mandated coverage systems are dependent on the compendia, it is in the interest of quality cancer care to support their efficient functioning. The original three statutory compendia are now reduced to two, and concerns have been expressed about the speed with which the remaining compendia review the available evidence and issue their conclusions about off-label uses. If timely decisions are not made because of operational difficulties with the existing compendia, the

Secretary should consider exercising the statutory authority to designate additional qualified compendia for the Medicare program.

Second, in addition to safeguarding the compendia-based approach, the Secretary should be mindful of the growth of peer-reviewed medical journals that provide credible support of off-label uses not yet included in the compendia. When Congress first legislated on this matter, HHS worked with cancer experts to designate the journals that should be used for coverage determinations. However, in the ensuing decade, other journals have become significant sources of credible information about medically appropriate off-label uses, and they too should be recognized as legitimate sources of coverage data. The cancer community has communicated this need to HHS without response.

Third, Medicare contractors are routinely ignoring significant reports of clinical benefit from off-label uses of cancer drugs reported in peer-reviewed journals. The Secretary has authority to require contractors to take into account the peer-reviewed literature, as contemplated by the statute, and that authority should be exercised to provide timely access to medically appropriate cancer therapy, as determined not only by compendia but also by peer-reviewed medical reports. In addition, the Secretary should make it clear to contractors that high quality phase II trials can provide a level of evidence sufficient to justify reimbursement. For example, in rare or orphan cancers, a single phase II trial may provide appropriate support for a coverage decision.

### CONCLUSION

Working closely with the cancer community, Congress has fashioned a strong system for identifying medically appropriate cancer therapies, including those that involve off-label uses of United States Food and Drug Administration approved drugs. The system has worked well, as reflected in improvements in cancer morbidity and mortality.

However, now after more than a decade of success, the system requires attention, and the cancer community encourages HHS to address these unmet needs in order to ensure that cancer patients have access to medically appropriate treatment, as reflected in timely compendia listings and reports of studies in the medical literature. Specifically, we call on the Secretary to:

- Use statutory authority to include all qualified compendia for use in the Medicare program.
- Work with the cancer community to identify the full range of legitimate, peer-reviewed scientific journals that may be relied on by carriers in determining coverage decisions.
- Require Medicare contractors to take into account peer-reviewed literature from these reliable sources as they determine coverage.

### REFERENCES

1. National Cancer Institute: Understanding the Approval Process for New Cancer Treatments. <http://>

[newscenter.cancer.gov/clinicaltrials/learning/approval-process-for-cancer-drugs/allpages/print](http://newscenter.cancer.gov/clinicaltrials/learning/approval-process-for-cancer-drugs/allpages/print)

2. Statement of William B. Schultz, Deputy Commissioner for Policy, FDA, before the Committee on

Labor and Human Resources, U.S. Senate, February 22, 1996. <http://www.fda.gov/ola/1996/s1447.html>

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## Reimbursement for Cancer Treatment

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### ***Authors' Disclosures of Potential Conflicts of Interest***

The authors indicated no potential conflicts of interest.