Congress of the United States
Washington, DC 20515

May 2, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

We write to express serious concerns with numerous aspects of the Centers for Medicare & Medicaid Services' (CMS) recent coverage decision regarding monoclonal antibodies (mAbs) targeting amyloid for the treatment of Alzheimer's disease. In particular, CMS's national coverage determination (NCD) strays from precedent, subordinates the clinical judgment and expertise of the Food and Drug Administration (FDA), and suggests a problematic new standard that risks chilling innovation and jeopardizing access to the cutting-edge treatments of the future. We urge CMS to reconsider this approach and to operate within the bounds of its statutory authorities and directives, which this latest decision oversteps.

As agency officials have acknowledged, CMS's recent coverage decision is a sweeping departure from precedent. Traditionally, CMS has generally provided coverage for FDA-approved indications of drugs and biologics, in addition to credible off-label uses. The agency has rarely subjected medications to the national coverage determination process because the FDA has the resources, expertise, and experience needed to make key judgments on safety and efficacy. Of the nearly 300 national coverage analyses conducted since 1999, only 29 have related to drugs and biologics, and only one determination in recent history has subjected medications to the restrictive coverage with evidence development (CED) paradigm, which allows access only for beneficiaries enrolled in eligible trials or studies. Moreover, even in that one case, the agency applied CED only to certain off-label uses, with broad-based Medicare coverage maintained for FDA-approved indications.

The final coverage decision for antiamyloid mAbs, by contrast, will severely restrict access to all drugs and biologics in this emerging class, even for antibodies that demonstrate a direct clinical benefit. On the basis of its interpretation of trial data for a single product, CMS has rendered coverage for a wide range of potential Alzheimer's treatments untenable. In particular, this decision will harm products that receive accelerated approval. Drugs and biologics approved through accelerated approval meet the same "safe and effective" statutory standard as products approved through the traditional approval pathway. FDA has leveraged accelerated approval to facilitate efficient market entry for at least 278 therapies, a sizable majority of which later received traditional approval. For many life-threatening conditions, from cancer to HIV/AIDS, FDA's accelerated approval program has been pivotal, enabling patients to access life-saving

treatments that might never have come to market otherwise. With its latest coverage decision, CMS has sent an alarming signal to prospective innovators, investors, and entrepreneurs hoping to advance new therapeutics through this pathway.

Furthermore, even for those who seek traditional approval for their drugs and biologics, the agency has injected uncertainty and unpredictability into the research, development, and commercialization process by creating restrictive study requirements that would apply for an entire class of drugs and biologics, including those meeting the FDA's gold standard of safety and efficacy, demonstrating a direct clinical benefit. A decision based on CMS's perspective on trials for a single product will have dire ramifications for scores of potential treatments, including those outside of this class. In short, the signals sent by the CED NCD for antiamlyoid mAbs jeopardize the high-risk research and development that drives life-saving and life-enhancing technologies.

Given the lack of clarity in the agency's final decision, please provide the following information by the close of business on May 19, 2022:

1. Will this coverage decision result in some Medicare beneficiaries receiving, and potentially even paying for, a placebo, when they are enrolled in trials for medications deemed safe and effective by the FDA?
2. Can CMS cite any precedent for applying CED to the FDA-approved indications of any drugs and biologics?
3. Does CMS plan to differentiate between accelerated approval and traditional approval in other decisions in the future? What is the basis for treating these pathways differently, given that they are both ultimately subject to the same "safe and effective" statutory standard?
4. To what extent and in what ways, specifically, did CMS consult and/or coordinate with the FDA in developing its proposed and final coverage decisions?
5. Does CMS plan to apply the CED paradigm to other FDA-approved indications of drugs and biologics in the future?
6. How does CMS plan to address the access gaps inherent in the randomized controlled trial requirements for mAbs approved through the accelerated approval program, as well as the extensive study standards for mAbs approved based on a direct clinical benefit?
7. What is the statutory or regulatory basis for interpreting "reasonable and necessary" to be a higher and more onerous standard than the "safe and effective" standard for FDA approval?
8. What does CMS believe it can learn from subjecting Alzheimer's therapies to clinical trials that the FDA would not learn through its gold standard approval process, including Phase I, II, and III trials?
9. How will CMS ensure that Alzheimer's patients in rural areas, racial minorities, and those with other neurological diseases such as Down syndrome will be able to access Medicare coverage for these treatments, considering the historic challenges many of these populations have faced in successfully accessing clinical trials?

If you have questions about this request, please contact: Conor Sheehey of the Senate Finance Committee staff; Corey Ensslin of the Senate Health, Education, Labor, and Pensions Committee

staff; Jay Gulshen of the House Ways and Means Committee staff; and Alec Aramanda of the House Energy and Commerce Committee staff. We look forward to reviewing your responses to these and other questions moving forward.

Sincerely,

Mike Crapo
Ranking Member
Committee on Finance

Richard Burr
Ranking Member
Committee on Health, Education, Labor, and Pensions

Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce

Kevin Brady
Republican Leader
Committee on Ways and Means