

Dateline Washington

prepared by the Division of Advocacy and Health Policy

CMS publishes rule on 2002 Medicare fee schedule

The Centers for Medicare & Medicaid Services (CMS) published the final rule for the 2002 Medicare physician fee schedule on November 1. The regulation includes a 5.4 percent across-the-board cut in payments for all physician services next year—lowering the dollar conversion factor from its current level of \$38.26 down to \$36.20.

The majority of the reduction for next year—4.8 percentage points—is the result of a congressionally mandated expenditure target formula for physician services known as the sustainable growth rate (SGR). This formula sets a target rate of spending growth for physician expenditures that is tied to a number of factors, including growth in the gross domestic product. CMS cites the slowing economy and a relatively high growth rate in physician spending under Medicare as the cause of the negative payment update.

In addition, the agency has incorporated a -0.6 percent reduction into next year's update to offset increased physician work values resulting from the second five-year review of this fee schedule component. Also factored into this number is a slight reduction to account for a "behavioral offset"—an anticipated increase in volume and intensity of physician services to offset losses due to the final year of the implementation of the new resource-based practice expense values. CMS is mandated to make these annual adjustments to the conversion factor in the event that policy or Medicare coverage decisions would increase aggregate spending for physician services under the fee schedule by more than \$20 million.

Breakdown of 5.4 percent payment cut

2001 conversion factor	\$38.26
2002 update resulting from SGR	-4.8 percent
Budget neutrality adjustment to account for increased work values from the 5-year review	- .46 percent
Budget neutrality adjustment to account for anticipated increase in services due to practice expense transition	-.18 percent
Total percentage reduction	- 5.44 percent
2002 conversion factor	\$36.20

While a small increase has been factored into the 2002 values for physician work for a number of general surgery codes, many of these gains were, unfortunately, offset by the 5.4 percent reduction to next year's conversion factor. As a result, payments for many general surgery procedures will remain flat for 2002.

Finally, the proposed rule on the 2002 fee schedule addressed a controversial issue revolving around inclusion of critical care in the valuation of certain procedure codes (in which critical care is a routine part of the postoperative care). CMS questioned whether Medicare might be making duplicate payments for critical care—once to the surgeon and once to another physician assigned to the intensive care unit. The agency made clear that it will not change Medicare's critical care payment policy in 2002, but asked for comments on various changes that could be made for 2003. The College objected strongly to all the proposed changes be-

House committee approves regulatory reform bill

College awarded AHRQ patient safety grants

cause they would violate the College's ethical standards on postoperative care, as well as Medicare's own global surgery policy. In the final rule, CMS noted the concerns of the College and numerous other health care groups and has indicated that it will carefully review these comments as it determines whether to make a future proposal on this issue.

At press time, Sens. Jim Jeffords (I-VT) and John Breaux (D-LA) had introduced the Medicare Physician Payment Fairness Act of 2001. If passed by Congress before the end of the year, this legislation would significantly reduce the negative 5.4 percent Medicare physician payment update scheduled to take effect January 1, 2002, under next year's Medicare physician fee schedule. The bill would legislate a negative 0.9 percent payment update for the 2002 fee schedule conversion factor, setting aside the scheduled 4.8 percent reduction tied to physician spending under the SGR. The Jeffords/Breaux proposal also mandates that the Medicare Payment Advisory Commission (MedPAC) conduct a study on replacing the SGR as a factor used to determine the physician payment update. The results of this study and MedPAC's recommendations for a substitute update formula would be presented to Congress by March 1, 2002.

On October 31, the House Energy and Commerce Committee approved H.R. 3046, the Medicare Regulatory, Appeals, Contracting, and Education Reform Act (Medicare RACER Act). Similar legislation was approved by the House Ways and Means Committee on October 11. Both bills address a number of serious problems with the claims auditing and overpayment recovery process. For example, both bills enhance physician due process rights, limit the use of extrapolation by Medicare contractors, and call for increased physician education on the part of Medicare contractors. The Medicare RACER Act also includes requirements not found in the Ways and Means bill, such as mandates that contractors provide general written guidance to physicians regarding billing and coding questions. Currently, the College is working with the American Medical Association and other physician groups to generate support for the strongest reform package possible.

Department of Health and Human Services Secretary Tommy Thompson announced on October 11 that the Agency for Healthcare Research and Quality (AHRQ) released \$50 million to fund 94 new research grants, contracts, and other projects to reduce medical errors and improve patient safety. The College was awarded three grants as part of this initiative. The first of these grants will fund a collaboration between the Veterans Administration (VA) and the College to evaluate the VA's National Surgical Quality Improvement Program as a reporting system to improve patient safety in surgery in both VA and non-federal hospitals. The second grant is for research to study the impact that a variety of factors could have on the safety of surgical care, including stress, organizational culture, teamwork, and working hours. The final grant will allow the College to modify existing educational programs to emphasize patient safety and initiatives to reduce surgical errors.