



3 Bethesda Metro Center, Suite 508, Bethesda, MD 20814 (301) 656-8877 (800) 327-5183 Fax (301) 656-7133
www.acoi.org

August 28, 2009

Ms. Charlene Frizzera, Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1406-P
P.O. Box 8011
Baltimore, MD 21244-1850

Subject: **Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Proposed Rule, 74 Fed. Reg. 33520 et seq. (July 13, 2009)(CMS-1413-P)**

Dear Acting Administrator Frizzera:

The American College of Osteopathic Internists appreciates the opportunity to comment on the Centers for Medicare and Medicaid Services' (CMS) Proposed Payment Policies Under the Physician Fee Schedule (PFS) and Other Revisions to Part B for calendar year 2010.

The American College of Osteopathic Internists (ACOI), which represents the nation's osteopathic internists, medical subspecialists, residents and fellows, is dedicated to the advancement of osteopathic internal medicine through excellence in education, advocacy, research and the opportunity for service. Further, the ACOI is committed to assisting its members' efforts to provide the highest level of care possible to their patients. Amendment of the proposed rule published in the *Federal Register* on July 13, 2009 is necessary to promote these goals and ensure the future ability of physicians to provide needed quality, cost-effective care to Medicare beneficiaries. As Congress works to find legislative approaches to expand access to healthcare coverage, it is more important than ever that CMS advance regulatory proposals that increase access to cost-effective high-quality healthcare, not decrease access to physicians and their services.

Geographic Practice Cost Indices (GPCIs): Locality Discussions

The ACOI recognizes the difficulties CMS continues to face to ensure that Medicare payments to providers are adequately adjusted to reflect regional variations in resource costs. We were pleased to see that CMS decided not to implement the proposals contained in the CY 2008 PFS final rule and appreciated the request for comments in the CY 2009 PFS proposed rule and locality study report. As we noted in our comments on the 2008 CY proposed rule, the ACOI was concerned with the recommendations put forth and their potential impact on the physician community and the patients they serve.

Ms. Charlene Frizzera

August 28, 2008

Page 2 of 4

This matter is complex and must continue to be examined in great detail. We encourage CMS to allow extensive public comment through public forums and the rulemaking process, should specific proposals for changing the locality configuration be advanced. In addition, we encourage CMS to continue to consider the potential for resources to be shifted from one region to another without addressing the fundamental issue of the increasing cost of providing care, regardless of geographic location. The result may be of help to physicians who practice in certain geographic areas, but at a cost to others. CMS must be careful not to cause access to care problems for Medicare beneficiaries in the regions from where resources are pulled due to economic barriers for physicians who want to provide care in these areas, but will be unable to do so. The ACOI does not believe that geographic location should be a determinant as to whether a physician can provide care to a Medicare beneficiary. Therefore, the ACOI encourages CMS' continued examination of alternatives to adjust GPCIs.

Payment for an Initial Preventive Physical Examination

The ACOI strongly believes that preventive care is an essential component of any quality healthcare delivery system. Preventive care has the potential to reduce overall healthcare spending and improve the quality of life for many. As a result, the ACOI supports CMS' proposal to increase the payment for an initial preventive physical examination (IPPE). The proposal to increase reimbursement for this service recognizes the increased cost in providing care as required for new Medicare enrollees under the MIPPA. Elevating the work RVU for HCPCS code G0402 to 2.30 takes an important step toward ensuring that physicians are properly reimbursed for providing face-to-face initial preventive physical examinations. The ACOI will continue to work with CMS and Congress to ensure that patients have access to important preventive care services.

Consultation Services

The ACOI recognizes the concerns raised by CMS with regard to the uncertainty surrounding the documentation requirements for reimbursement for consultation services. While there have been efforts by CMS to clarify the utilization of these codes, much confusion remains. The ACOI is concerned that even more confusion will be created by eliminating the use of all consultation codes and increasing the work RVUs for new and established office visits beginning in January 2010. We appreciate the increase in work RVUs for new and established office visits by approximately six percent, but are concerned with the potential effect on completely eliminating all consultation codes. In addition, we are concerned with the short time frame in which to educate physicians and their staff on the proposed changes. Education will be essential in moving forward to avoid creating problems similar to those that CMS is trying to resolve.

Physician Payment, Efficiency, and Quality Improvements—Physician Quality Reporting Initiative

The ACOI is committed to advancing initiatives that enhance a physician's ability to improve the quality and efficiency of care provided to his or her patients. The ACOI continues strongly to support the Physician Quality Reporting Initiative and efforts to expand participation in the program. We welcome efforts to simplify participation in the PQRI. As such, we are pleased that CMS is proposing to allow the report of data on PQRI quality measures through a qualified electronic health record product. We encourage CMS to continue to allow the reporting of data through claims, or a qualified registry so that as many physicians as possible participate.

Definition of CAP Physician

The ACOI raised concerns when CMS first proposed expanding the definition of physician for the purposes of administering the Competitive Acquisition Program (CAP) in the 2009 Physician Fee Schedule proposed rule. We have not changed our position and continue to believe that CMS lacks regulatory authority to take this action through the 2010 PFS proposed rule. Such an expansion of the definition of physician is fraught with problems regardless of whether it is stated to be of limited applicability.

As you noted in the proposed rule, section 1861(r) of the *Social Security Act* defines “physician” to include a doctor of medicine or osteopathy legally authorized to practice medicine or surgery; a doctor of dental surgery or dental medicine; a doctor of podiatric medicine; a doctor of optometry; or a chiropractor. Section 1861(r) provides an all-inclusive list. If the legislature wished to, it would have included nurse practitioners, clinical nurse specialists and physician assistants in the statutory definition of “physician.” It is not within the purview of CMS to expand a definition of a term clearly laid out in statute. While the ACOI understands your concerns with the administration of the CAP, the proposal put forth is an unreasonable approach to a problem that CMS itself acknowledges impacts only a “small segment of providers.” There is no justifiable reason to define a nonphysician provider as a physician for the sole purpose of expediency. The ACOI encourages CMS to seek an alternative resolution to this issue that would not undermine the definition of “physician” as provided in statute.

Physician Self-Referral

The physician self-referral law continues to be a complicated area of law to examine. One area of confusion has evolved around application of the exceptions when applying the “stand in the shoes” provision. The proposed rule attempts to clarify this provision by simplifying the process of determining whether a physician stands in the shoes of his or her physician organization. The ACOI welcomes CMS’ efforts to clarify the rule by stating that not all physicians in a physician organization must sign documents confirming a compensation arrangement between their organization and a DHS entity. It is beneficial to deem a physician to have signed the written agreement if the agreement is signed by the organization’s authorized signatory.

Physician Fee Schedule Update for CY 2010

The ACOI appreciates the difficulties that confront CMS when dealing with the physician fee schedule update. The difficulties created by the sustainable growth rate (SGR) are evidenced by the extensive summarization of the physician fee schedule and the impact of legislative enactments over the last several years. The CY 2010 PFS estimated average negative 21.5 percent update will benefit some physicians and their patients while harming others. We appreciate the beneficial changes to internal medicine services, but are concerned with the extreme reductions that would be experienced by some subspecialties. We agree with CMS’ assessment that growth has been limited, but that reform is needed.

One important step that CMS is proposing is the retroactive removal of physician supplied drugs from inclusion in the definition of physician services. Growth in drug expenditures has far outpaced growth in other services. From the 1997 to 2005, spending on drugs under the SGR increased by 22 percent while spending on all services (including drugs) increased by only 6

Ms. Charlene Frizzera

August 28, 2008

Page 4 of 4

percent. The ACOI agrees with and supports CMS' assertion that, "Given the significant and disproportionate impact that the inclusion of drugs has had on the SGR system, we believe it would be appropriate to revise the definition of physicians' service for purposes of the SGR." By retroactively making this change, the number of years in which physicians are projected to receive negative updates will be reduced. The ACOI welcomes the proposal to retroactively remove the cost of physician-administered drugs from the calculations of the sustainable growth rate. On many previous occasions the ACOI advocated for this action by CMS and we encourage its adoption in the final rule.

The ACOI appreciates the opportunity to provide these comments. We look forward to working with CMS in the future on these and other issues of importance impacting the nation's health care delivery system.

Sincerely,

A handwritten signature in black ink, reading "Humayun J. Chaudhry, DO, MS, FACOI". The signature is written in a cursive style.

Humayun J. Chaudhry, DO, MS, FACOI, FACP
President

Cc: ACOI Board of Directors
ACOI Clinical Practice Committee
ACOI Government Affairs Committee