American Society of Anesthesiologists

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January 3, 2011

Donald Berwick, MD
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-1503-FC
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: **CMS-1503-FC**, Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011; Final Rule, November 29, 2010

Dear Dr. Berwick:

The American Society of Anesthesiologists (ASA), on behalf of its over 44,000 members, appreciates the opportunity to comment on several of the issues in the final rule with comment period published in the November 29, 2010, Federal Register. As the recognized leaders in patient safety and quality, we look forward to working with you to ensure optimal care for our Medicare and Medicaid patients.

Anesthesia Conversion Factor

We understand and appreciate the enormous burden placed upon you and your dedicated staff as a result of the Patient Protection and Affordable Care Act, as well as, continuous operations of the Medicare and Medicaid programs. Given such burdens, we believe it is imperative, now more than ever, that CMS partner and collaborate with stakeholders in the health care arena, particularly medical specialties. Together we can ensure, as appropriate, that future regulations and payment rules are meaningful, beneficial to our patients and your beneficiaries, and achieve mutually desired outcomes.

It is in this spirit of collaboration that we express concern with the explanation of the anesthesia conversion factor contained in the 2011 Physician Fee Schedule final rule. For the first time in at least six years, we have been unable to validate the methodology and numbers provided by CMS in the final rule in its discussion of the anesthesia conversion factor. While we know that CMS staff works diligently and thoroughly on development of the rule and all computations contained within it, we also recognize that these methodologies are often extraordinarily complex. In order to understand and explain the changes to our 45,000 members we first need to understand those changes ourselves. It seems prudent and reasonable that rulemaking issued for public comment should be written, when feasible, so that non-experts, including Medicare beneficiaries, could understand and provide commentary. Further, we want to help CMS ensure their methodology is accurate, as ASA has identified errors in the payment rules in three of the past five years.

The explanation of the anesthesia conversion factor is contained in two paragraphs and Table 46 – Calculation of the CY 2011 Anesthesia Conversion Factor – on pages 73283 and 73284. To be clear, we can ascertain the origin of all of the elements that comprise the anesthesia conversion factor, as identified in Table 46, with the exception of one – the "2011 Anesthesia Adjustment." This adjustment is listed as -2.3 percent (0.97651). In our reading of the final rule, we are unable to locate any definition of "anesthesia adjustment" or the specific factors that comprise such adjustment. We have followed up with

CMS staff to determine the basis for this number, but staff was unable to provide this information, as it would benefit one group over another. We continue to work, evaluate and attempt to derive this calculation and validate the methodology at great expense to the society.

Given the critical importance of anesthesiologists to the Medicare and Medicaid programs, and our mutual desire that regulations be as transparent and clear as possible, **we request that CMS provide additional clarification on the methodology and calculations used to derive the 2011 anesthesia conversion factor, including the basis for the 2011 anesthesia adjustment. We also request for future payment rules that CMS provide additional guidance and clarification on conversion factor methodologies.**

Interim Final Work RVUs for Potentially Misvalued Codes – Transforaminal Epidural Injections

The AMA Relative Value Unit Committee (RUC) provided CMS with work recommendations for 291 CPT® codes for CY 2011 (Table 53 of the final rule). Of these 291 codes, 82 were identified as potentially misvalued based on various screening mechanisms. CMS states in the final rule that it is not accepting AMA RUC-recommended work values for 26 of the 82 codes identified as potentially misvalued. In the alternative, CMS is assigning its own work valuations.

As acknowledged by CMS, CPT® code 64483 (Injection(s), anesthetic agent and/or steroid, transforaminal epidural, with image guidance (fluoroscopy or CT), lumbar or sacral; single level) was identified as a potentially misvalued code through the Five-Year Review Identification Workgroup under the fastest growing code screen. After extensive review and comparison to MPC service 54150 (Circumcision, using clamp or other device with regional dorsal penile or ring block), with work RVU of 1.90, pre-time of 25 minutes, intra-time of 15 minutes and post-time of 5 minutes, the AMA RUC recommended 1.90 work Relative Value Units (RVUs). In addition, the RUC noted that a work RVU of 1.90 for 64483 was appropriately more intense than 64493 (Injection(s), diagnostic or therapeutic agent, paravertebral facet (zygapophyseal) joint (or nerves innervating that joint) with image guidance (fluoroscopy or CT), lumbar or sacral; single level)(work EVU = 1.52 and 17 minutes pre-time, 15 minutes intra-time and 10 minutes immediate post-time).

In the final rule, CMS states that it disagrees with the RUC's recommendation and elects to adopt 1.75 work RVUs based on the survey 25th percentile; however, CMS does not explain the rationale for this decision other than it "more appropriately accounts for the significant reductions in pre-, intra-, and post-service time. Further, there is some confusion as to the intent of CMS given that Addendum B (pg. 73727) identifies the work RVU at 1.90. Based on the rationale outlined above and the lack of contrary information, **we join the RUC in requesting that CMS accept the RUC recommended values for this service, 1.90 RVUs for 64483.**

Thank you very much for your consideration of our comments.

Sincerely,

Mark A Warner

Mark A. Warner, M.D.
President
American Society of Anesthesiologists