

# CMS Finalizes 5% Physician Pay Cut—Again

BY MARY ELLEN SCHNEIDER  
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Physicians may be feeling a sense of déjà vu with the announcement from Medicare that physician payments will be cut 5% as of Jan. 1, 2007.

This is the fifth year in a row that physicians have been threatened with a payment cut under Medicare. Medical specialty societies have been urging Congress to step in and avert this most recent across-the-board cut, as they have for the past 4 years.

The cut, announced in early November by officials at the Centers for Medicare and Medicaid Services, is part of the Medicare Physician Fee Schedule final rule, which is issued annually. This year's rule also sets the Medicare conversion factor—a multiplier used to calculate payments for each service physicians provide—at \$35.98.

The 5% cut is required under a payment formula passed by Congress several years ago. That formula, known as the sustainable growth rate (SGR), "was designed to adjust the update to make actual [expenditures] and target expenditures equal over time," according to CMS policy. "If outlays under the fee schedule are higher than the [spending target set by the government], the update is decreased. Conversely, if outlays are lower than the target, the update is increased." The cut announced by CMS is slightly less than the 5.1% figure that the agency estimated earlier this year.

The final rule also includes some good news for physicians who spend a lot of time performing evaluation and management services. CMS has finalized plans to increase the work relative value units

(RVUs) for evaluation and management services, which make up much of the practice of primary care and other cognitive specialties. Each physician service in the fee schedule has a certain number of RVUs associated with it; the RVUs are then multiplied by the conversion factor to arrive at a charge for the service.

The increases for evaluation and management services were recommended by the American Medical Association (AMA) Relative Value Scale Update Committee (RUC) as part of a 5-year review. However, they may be largely offset by the 5% across-the-board payment cut, according to the AMA. "For the great majority of primary care physicians, the overall physician payment cut due to the flawed payment formula will negate any payment increases specific to physician office visit payments," Dr. Cecil B. Wilson, AMA board chair, said in a statement.

CMS estimated in the final rule that internal medicine will experience a 1% overall cut in allowed charges under Medicare due to the combination of the changes to work and practice expense RVUs, the SGR cut, and other cuts called for under the Deficit Reduction Act of 2005.

Family physicians will break even once all factors are calculated. CMS estimates that only four specialties will see positive updates in 2007 once all the payment changes are factored in—emergency medicine (2%), endocrinology (1%), infectious

disease (4%), and pulmonary disease (1%).

One area of physician services greatly affected by the final rule is imaging services. Starting Jan. 1, physicians who perform multiple imaging procedures on contiguous body parts during the same session will be paid in full for the first procedure and then will receive a 25% cut in the technical component payment for additional imaging procedures.

In addition, the final rule implements imaging cuts called for under the Deficit Reduction Act. Under this provision, the payment for the technical component of certain physician-performed imaging services is capped at the hospital outpatient amount for the same service. This cap does not apply to mammography services.

The AMA and other medical specialty organizations called on Congress to take action when it returns for a short lame-duck session. The groups have been lobbying for months for Congress to pass stopgap legislation that would eliminate the cut this year and give legislators time to agree on a new formula for determining physician payment under Medicare next year.

There is reason to think that Congress will act to reverse the payment cuts. From 2003 to 2006, Congress stopped Medicare payment cuts scheduled to take effect under the SGR formula. And currently, 80 senators and 265 representatives have signed

on to letters to the congressional leadership calling for the cuts to be stopped.

In the final regulation, CMS officials are giving with one hand and taking away with the other, said Dr. Rick Kellerman, president of the American Academy of Family Physicians. For example, the regulation outlines increases to the work RVUs for evaluation and management services often performed by primary care physicians, but uses an inappropriate mechanism to apply budget neutrality to the changes, he said. CMS is required by law to keep the changes budget neutral, so officials at the agency will apply a 10.1% across-the-board cut to work RVUs without changing the number of RVUs assigned to each service. Making this adjustment to the work RVUs distorts the relative value system, he said. The budget neutrality adjustment should instead be made in the conversion factor, where the cut would be more transparent, he said.

But Dr. Kellerman praised the move by CMS to change the way it determines practice expense RVUs, which include the direct and indirect costs associated with a procedure. Under the new system, practice expenses will take into account practice expense data from eight specialties. The changes to the practice expense RVUs are being phased in over 4 years.

Although primary care specialties make out relatively well under the RVU changes, other specialties will face deep cuts under them. For example, CMS estimates that cardiologists will face a 1% cut in allowed charges in 2007, and a 5% cut in 2010 based on changes to the work and practice expense RVUs. ■

## Physician, Shield Thyself From Problem Employees, Lawsuits

BY BETSY BATES  
Los Angeles Bureau

PORTLAND, ORE. — As if it weren't aggravating enough to worry about frivolous lawsuits filed by patients, physicians, like all employers, also need to consider their legal liability with regard to their employees.

Fortunately, most employment lawsuits are eminently avoidable, said employment attorney Kathy A. Peck at the annual meeting of the Pacific Northwest Dermatological Society.

Supervisors should follow the "golden rules" of discipline, said Ms. Peck, a partner in the law firm of Williams, Zografos, and Peck in Lake Oswego, Ore.

These rules include immediacy, consistency, impersonality (targeting the behavior, not the person), and positivism, always remembering that the goal is to rehabilitate employees whenever possible, rather than to punish or ostracize them.

Physicians and office managers also need to watch what they say. Ms. Peck said many cases may

turn on remarks, perhaps unintentional, that might be interpreted as being derogatory or stereotypical with regard to a protected class of workers, such as older employees, women, or members of a racial or ethnic group.

Work environment harassment claims are on the rise, so practices should respond promptly and definitively to complaints of sexual, racial, ethnic, religion, age, and disability-related harassment. Just as physicians should monitor their own remarks and behavior, they are responsible for their office environment and should take immediate corrective action if that atmosphere is tainted by "unwelcome conduct," Ms. Peck said.

Require applicants to fill out an application form. Great interview skills do not necessarily re-

fect a solid employment history. "You can hide things in a resume," she said.

All employees (established and newly hired) should sign an employee handbook documenting policies and procedures. Include within the handbook an "at will"

clause stating that the employee is free to resign at any time and that the practice is free to terminate the employee "at will." The manual also should state that this policy remains in effect unless it is changed in writing by the physician or another designated individual at the office.

"There are huge exceptions" to when an employee can be discharged and why—because of pregnancy, for example—but the clause protects employers from being sued by those who assert they were hired until they retired, or some

other vague point in time, Ms. Peck said.

Another issue that needs to be addressed is when an employee has a bad attitude. It's a huge mistake to put up with "posturing princesses" or passive-aggressive manipulators who stir up trouble. These employees can sour morale very quickly, leading to turnover problems, excessive time off, stress claims, and grievances, she said. Their behaviors should be documented.

When it comes to employee performance, it is important to not allow "soft" evaluations. It will be very difficult to justify in court the dismissal of an employee who received above-average evaluations for the past 6 years.

Any decisions that are made regarding personnel must be documented. An employer who can present a record of fair, reasonable, and consistent evaluations and decisions will fare much better if an employment discrimination case makes it to court.

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**If something does happen that requires action, always listen to the employee's side of the story. Not only is this fair, it might change your perception.**

Not only is this fair, it might change your perception of an event, and it also helps to establish an accurate line of documentation right away, said Ms. Peck.

A dismissed employee later may come up with a multitude of supposed claims against you, but if someone listened to and documented his or her initial story, it establishes these facts on the record.

When an employee needs to be discharged, do not call it a lay-off. Softening the blow to an employee by falsely implying that their dismissal was a result of a reduction in the workforce is a good way to get "into trouble with employment law," she said. An incompetent 55-year-old employee who is laid off and immediately replaced with a 36-year-old employee has the makings of a successful age-discrimination suit, she explained.

It is also important to provide a "clean" reason when an employee is discharged. If an employee was caught embezzling money, that's a firing offense, and it's enough, Ms. Peck said. ■