September 28, 2001

The Honorable Nancy L. Johnson
Chair, Subcommittee on Health
Committee on Ways and Means
United States House of Representatives
1136 Longworth House Office Building
Washington, DC 20515

Re: Follow-up information on in response to your request regarding a time-based E/M documentation guidelines pilot test

Dear Madame Chairwoman:

On behalf of the American College of Physicians-American Society of Internal Medicine (ACP-ASIM), representing 115,000 physicians and medical students of internal medicine, I am writing to submit follow-up information on the September 25 hearing on H.R. 2768 regarding a time-based evaluation and management (E/M) documentation guidelines pilot test for the Medicare program.

We appreciate the Subcommittee's interest in this proposed pilot test. As you know, the current documentation guidelines are overly complex and inconsistent with typical clinical practice, nor are they conducive to providing quality patient care. A time-based guideline with basic medical documentation found in the patient chart is a simple, efficient, and useful method for government auditors to ensure that Medicare funds are being used appropriately while not interfering with normal patient care. We are pleased that the Subcommittee is interested in studying this concept further.

As an alternative to other documentation guidelines, ACP-ASIM supports a proposal to use patient encounter time and the "documentation basics"--a one-page document found in the current 1997 Guidelines (see attached). ACP-ASIM encourages the Committee to add a provision to H.R. 2768 in preparation for mark-up that requires the Centers for Medicare and Medicaid Services (CMS) to pilot test such an approach. ACP-ASIM has carefully studied this issue and concluded that physicians who code for E/M services typically consider face-to-face patient encounter time as a surrogate for physician work. Moreover, the Harvard Hsaio study and a Physician Payment Review Commission (PPRC) study demonstrated a very strong statistical correlation between the amount of physician work and the intra-service (face-to-face patient care) time associated with providing an E/M service.

Attached is a brief description of the proposed pilot test concept. The new approach was developed by a blue ribbon panel of experts in the fields of medical informatics, Medicare policy and operations, health services research, and physician service coding and nomenclature. Also attached are two journal articles describing two studies that support the conclusions of this new approach to E/M documentation guidelines.

ACP-ASIM also would like to reiterate our support of the Current Procedural Terminology (CPT) coding system. It is the language physicians use to communicate the services they provide to their patients. Our concerns are with the documentation guidelines required by Medicare, not the CPT codes.

Three final points on other important aspects of H.R. 2768 we would like to emphasize following the September 25 hearing are: (1) due process rights; (2) repayment plans; and (3) extrapolation.

1. Physicians and other Medicare providers should not have to remit an alleged overpayment to CMS while appeals are pending. All administrative appeals should be exhausted before the physician is required to remit the overpayment.

2. Physicians and other health care providers should be entitled to repayment plans if their overpayments impact the financial well being of their practice. Providers should have the option of a 3-year repayment plan or offset plan against future Medicare payments unless there is evidence of fraud.

3. Extrapolation of alleged overpayment amounts to non-audited claims should be eliminated the first time a physician or other health care provider is assessed an alleged overpayment, unless fraud is suspected. In addition, physicians should be able to appeal the findings regarding the initial probe sample without being subjected to the "statistically valid random sample".

If you have any questions about our comments on a time-based pilot test for the E/M documentation guidelines, please contact John DuMoulin, ACP-ASIM's Director of Regulatory Affairs, at (202) 261-4535 or e-mail <jdumoulin@mail.acponline.org>.

Sincerely,

William J. Hall, MD, FACP
President

Attachments: Medicare Evaluation and Management Services Documentation Guidelines: Encounter Time as an Alternative to Detailed Guidelines (September 2001);

1997 Documentation Guidelines For Evaluation and Management Services; General Principles of Medical Record Documentation;

Braun, P., et al, "Predicting the Work of Evaluation and Management Services", *Medical Care*, November 1992, Vol. 30, No. 11, Supplement, Pages NS13-NS27.

Lasker, R.D., and Marquis, M. S., "The Intensity of Physicians' Work in Patient Visits", *New England Journal of Medicine*, July 29, 1999, Vol. 341, No. 5., Pages 337-341.

Medicare Evaluation and Management Services Documentation Guidelines
Encounter Time as an Alternative to Detailed Guidelines
September 2001

The American College of Physicians-American Society of Internal Medicine (ACP-ASIM) recommends that the Centers for Medicare and Medicaid Services (CMS) conduct a pilot test that allows physicians to select a level of an evaluation and management (E/M) service based on encounter time with the patient with documentation of the E/M documentation "basics" as defined in the "general principles of medical record documentation" section of the 1997 guidelines. Current Procedural Terminology (CPT) currently states that physicians can use time to select a level of service when patient counseling and/or coordination of care accounts for more than 50% of the encounter. It could be expanded to give physicians the option to use time to select a level of service for all E/M services. The concept could be pilot-tested for documentation purposes without changing the actual CPT descriptors. The AMA CPT Editorial Panel could consider incorporating the expanded role of time if the pilot was successful.

Physicians would have the option to select a level of service by comparing the length of the encounter to the "typical times" found in the Harvard/RUC Physician Time Database or by using the traditional method using extent of history, exam, and decision making. The proposal would not penalize physician efficiency nor would it require CMS to pay more in the aggregate for E/M services.

We believe it would be relatively inexpensive for CMS to pilot test a time-based approach. It would be unnecessary for CMS to send individuals or instruments to monitor the precise length of services. CMS could use the same audit process it plans for its other pilot tests. Our proposal requires physicians to document relevant clinical information beyond the length of the encounter. In addition, CMS could ask for the charts pertaining to all services the physician performed in a given day if the reviewer suspected that the physician was misrepresenting the time he or she spent with patients. Carriers may also be able to detect potential coding abnormalities by looking at physician billing profiles.

Our research indicates that physicians who select the level of E/M service typically consider face-to-face patient encounter time as a surrogate for physician work. Moreover, the Harvard Hsaio study and a Physician Payment Review Commission (PPRC) study demonstrated a very strong statistical correlation between the assessment of physician work and the intra-service (face-to-face patient care) time associated with providing an E/M service. Our proposal is consistent with CPT structure as it allows physicians to cite time as a proxy for the work performed (i.e. history, exam and decision making).

Further, CMS should provide an update on the status of its comprehensive review of the encounter time contained in National Ambulatory Medicare Care Survey (NAMCS) data. At the October 2000 AMA Relative-value Scale Update Committee (RUC) meeting, CMS stated that the NAMCS data showed a strong correlation between encounter time and work for internal medicine E/M services. While this statement seems to support our encounter time proposal, CMS stated that it is working on a more comprehensive analysis of the NAMCS data.

We urge CMS to test an idea that would simplify documentation requirements while ensuring that physicians report a level of service consistent with the work and effort involved in providing the service.

If you have any questions about our comments on a time-based pilot test for the E/M documentation guidelines, please contact John DuMoulin, ACP-ASIM's Director of Regulatory Affairs, at (202) 261-4535 or e-mail <jdumoulin@mail.acponline.org>.