

February 28, 2001

Mr. Bruce M. Fried
Director, Center for Health Plans and Providers
Health Care Financing Administration
315- H HHH
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Fried:

It has come to our attention that some specialty societies represented by the Practice Expense Coalition are urging HCFA to interpret the practice expense "down payment" in the Balanced Budget Act of 1997 (BBA '97) in a manner that we believe to be inconsistent with congressional intent.

As we understand it, HCFA is being advised by the Practice Expense Coalition that the changes in the practice expense RVUs (PE-RVUs) that would occur under the "down payment" special rule for 1998 [Section 4505, (e)] should be a one-time adjustment that would not be continued for the purposes of the subsequent transition to resource-based practice expenses as described in Section 4505, (a), (b) (1) and (b) (2). Under this interpretation, the charge-based PE-RVUs that would be "blended" with those derived from the new resource-based methodology, beginning in 1999, would be those in effect prior to application of the down payment special rule. If this interpretation is accepted by HCFA, it would seriously disadvantage the office visit codes that will have received higher PE-RVUs under the special rule for 1998, since the new resource-based practice expense RVUs would be blended with the lower charge-based PE-RVUs that were in effect prior to application of the special rule.

ASIM strongly believes that this interpretation of the law is completely at odds with the legislative history of Sec. 4505, as well as the statutory and report language, and should be rejected by HCFA.

The transition language in Section 4505, (a), (b) (1) and (b) (2) is not by itself clear on the question of whether or not the "product" to be blended with the new resource-based PE-RVUs is intended to incorporate the changes in PE-RVUs as mandated by the special rule in Section 4505 (e). The "product" refers to the OBRA '89 methodology for determining PE- RVUs and was taken from the House bill, which did not include the special rule for 1998. But Congress also included the Senate language on the down payment in Section 4505 (e), which showed that it intended for the "product" to be the OBRA '89 practice expense RVUs as modified by the special rule for 1998.

The legislative history clearly shows that the intent of Section 4505 (e) was to begin the transition to resource-based PE-RVUs, not to make a one-time adjustment in Medicare fees.

The report language from the Senate Finance Committee, which reported the 1998 special rule that was subsequently incorporated into the conference agreement, is explicit on this point. Under "reasons for change" the report explains:

The resource-based practice expense methodology is expected to result in enhanced reimbursement for physician services provided in an office setting with undervalued office costs, and reduced reimbursement for services provided in a hospital or other health care facility (such as surgical procedures) with overvalued costs. To allow this redistribution to proceed in an orderly fashion, the Committee provision would provide for an extended transition period for implementation of the resource-based methodology for practice expenses . . . For 1998, the Committee bill would establish a special rule by which approximately 10 percent of the amount of money expected to be redistributed under practice expense reform would be subtracted from the practice expenses of physician services where practice RVUs exceed work RVUs by 110 percent and added to the practice expense of primary care services provided in a physician's office which have been determined to have

been historically underpaid. Full implementation of practice expense reform would occur no later than 2001, with implementation in equal yearly proportions over this period.

This provision referenced in the Senate Finance Committee report language was subsequently passed by the entire Senate.

The House-Senate conferees subsequently accepted the Senate provision on the 10% transition in 1998. The conference report states:

The conference agreement includes the Senate provision with an amendment. If the Secretary determined that the amount of the reallocation would exceed \$390 million, the Secretary would apply a higher percentage than 110% so that the estimated reallocation would not exceed \$390 million. Further, the practice expense relative value units for a procedure performed in an office or a setting outside an office could not be reduced if the in-office or out-of-office practice expense relative value would be increased under the proposed regulations issued June 18, 1997.

The conferees, by accepting the Senate language on the special rule for 1998, clearly accepted the Senate view that the change in PE-RVUs would carry over into the subsequent transition period. Had the conferees viewed the special rule for 1998 as instead being a one-time change rather than the first step of a transition that would carry over into the subsequent years, as intended by the Senate provision, they would have expressly stated so in the report language or by further amendment.

Congress could have simply mandated that HCFA provide a bonus payment to the office visit codes equal to \$390 million, funded by an across-the-board percentage reduction in total payments for procedures done most of the time in the hospital setting. A one-time across-the-board adjustment would have redistributed the same amount of dollars, but without making a permanent change in the PE-RVUs. But Congress chose instead to change the PE-RVUs as the first step toward transitioning to resource based practice expenses. It defies reason to suggest that Congress intended for HCFA to go through the process of making changes in the PE-RVUs for 1998, only to have them revert to the pre-special rule PE-RVUs the following year.

Precedent also supports ASIM's interpretation of Congress' intent. Every previous legislative adjustment in practice expense or work RVUs has been permanent. For instance, the OBRA 93 provision that capped PE-RVUs at 128% of the work RVUs resulted in a permanent change in the PE-RVUs for those affected procedures. The special rule for 1998 in the BBA '97 was modeled after this provision. We are aware of no instance when Congress mandated that HCFA change RVUs for one-year only. Changes made by HCFA in work or PE-RVUs in any given year have also always been carried over into subsequent years.

ASIM strongly urges HCFA to reject the effort being made by the Practice Expense Coalition to subvert Congress' intent. The record is clear that Congress wanted to begin raising the PE-RVUs for undervalued office visit services while reducing those for overvalued services, beginning in 1998; that it intended for this to be an initial step in the transition to RBPEs; and that the 1998 PE-RVUs as adjusted by the down payment were intended to be blended with the resource-based practice expense relative values beginning in 1999. There is no basis for concluding that Congress instead intended--or that the statute requires--that the increase in PE-RVUs for office visits due the special rule apply only in 1998.

Sincerely,

Robert B. Doherty
Vice President
Governmental Affairs and Public Policy