

June 19, 2007

OMB Human Resources and Housing Branch  
Attention: Carolyn Lovett  
New Executive Office Building, Room 10235  
Washington, DC 20503

Re: CMS-R-131

Dear Ms. Lovett,

I am writing on behalf of the American Academy of Family Physicians (AAFP), which represents nearly 94,000 family physicians and medical students nationwide. Specifically, I am writing to offer our comments in response to the request for information on the Advance Beneficiary Notice of Noncoverage (ABN) as published in the *Federal Register* on May 25, 2007.

#### Estimated Burden

As we noted in the previous comment period, the estimated burden appears to be seriously underestimated. The Centers for Medicare and Medicaid Services (CMS) noted that comments to this effect were anecdotal only. This is true because it is CMS which has the data to substantiate a better estimate of this burden. CMS has in the past indicated the ability to track modifier usage from claims data when investigating the use of modifiers such as 25 and 59. This same data should be available to indicate the number of claims by unique physician and provider identifier which contained the GA modifier indicating that an ABN was on file. This number of claims should then be increased by approximately one-third to account for those beneficiaries who elect to not receive the service or to not have a claim filed. Division of this number by the number of unique physician and provider identifiers should provide a better estimate of the burden per notifier. Family physicians, of whom over 90% provide in-office laboratory services, will provide far more ABN's than, for example, surgical specialists who do not have in-office lab at all. Thus, the AAFP continues to maintain that the estimated burden for many family physicians is underestimated by 50 to 150 times.

We also again note that the total cost per notifier of \$69.39 does not agree with the statistics provided and significantly underestimates the burden. If the estimated total cost of delivering the ABN's is \$326,255,502.00 and notifiers will deliver 40,302,506

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ABN's each year (or 31.7 ABN's per notifier per year) as indicated in number 2 of the supporting statement, then the burden would be \$256.62 per notifier.

Further, CMS noted that the work of activities such as researching coverage policies that are not solely required by the ABN are not always part of preparing and delivering the notice, and moreover, are general responsibilities of those participating in Medicare. This may be true. However, some portion of these general responsibilities of participating in Medicare should be attributed to the burden associated with delivering the notice. If not, where is the burden of these activities accounted for?

#### Transition Burden

We agree with commenters who noted other concurrent CMS initiatives involving physicians that require significant operational resources (e.g., the National Provider Identifier (NPI) initiative), and asked for a reasonable period of time in which to transition from the current ABN to the new notice. We note that the NPI initiative is one of several initiatives faced by physicians in 2007 including transition to the new CMS 1500 form and preparation for the Physician Quality Reporting Initiative. We appreciate CMS's agreement that a reasonable transition period is necessary and that this issue will be addressed prior to final approval of the new ABN.

#### Use of Single ABN

We note that the simplification of one ABN form has been lost to the creation of one form with three versions. There are, in essence, three forms with minor differences. The generic version of the form which leaves field D blank should meet the needs of all physicians and providers and avoid confusion. However, the reasons Medicare may not pay which are included on the laboratory version of the ABN might be included on the generic version in lieu of a separate form. The three reasons given could be modified as follows to be inclusive of services other than laboratory tests:

- ◆ Medicare does not pay for these (D) \_\_\_\_\_ for your condition.
- ◆ Medicare does not pay for these (D) \_\_\_\_\_ as often as ordered for you.
- ◆ Medicare does not pay for experimental or research use (D) \_\_\_\_\_.

This would allow for one version of the ABN form which could be used for many purposes as was indicated in the original request for comments.

Other Insurance

The revision to the instruction that physicians may help patients to use other insurance is appropriate and less confusing than that previously noted. We appreciate that CMS made this change.

Additional Information

It is clear that the ABN has little room for additional information unless expanded to a legal size document. However, we again note that, for reasons of continuity of care, the patient should be advised to contact their primary care physician when declining services of other physicians or providers. By leaving this as an optional addition to the form, CMS misses an important opportunity to instruct beneficiaries on the importance of continuity of care.

We appreciate the opportunity to again comment on the revision of the ABN form and trust that CMS will continue to seek the input of physicians in this and other Medicare initiatives which have the potential to affect patient access to and quality of care.

Sincerely,

A handwritten signature in cursive script that reads "Larry S. Fields M.D.".

Larry S. Fields, M.D., FAAFP  
Board Chair

Bcc: Doug Henley, M.D.  
Todd Dicus  
Rosi Sweeney  
John Swanson  
Kent Moore  
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