

September 17, 2007

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Dear Dr. Rosen,

I am writing on behalf of the American Academy of Family Physicians, which represents nearly 94,000 physicians and medical students nationwide. This letter is in response to your invitation to provide comments on advantages and disadvantages of the public release of the Medically Unlikely Edits (MUE).

We would first comment that CMS previously stated in the document titled *Questions and Answers Concerning Medically Unlikely Edits* that “CMS does want to make this as public a process as possible.” CMS has also indicated in MM5495, “Providers may appeal MUE criteria by forwarding a request to the carrier or A/B MAC who, if they agree, will forward the appeal to the National Correct Coding Contractor.” This lends to two points:

- ◆ Failure to release the edits to the general public is incongruous with these statements.
- ◆ How can the average physician appeal edit criteria when the criteria are unknown?

In consideration of the request to provide advantages and disadvantages of public release of the MUE, we would propose the following:

Release allows for education and incorporation into physician and provider billing systems

CMS has previously indicated that the MUE are intended to reduce payment of claims which obviously contain an error in the number of services reported. CMS further acknowledged that this is often due to typographical error as opposed to intentional abuse.

The public availability of the Correct Coding Initiative edits has allowed physicians and software vendors to incorporate the edits into the billing process, which aids physicians in submitting correctly coded claims. The public release of the MUE would undoubtedly prompt the incorporation of these criteria and further reduce the number of claims reported with typographical errors. Knowledge of the MUE would also serve as an indication to physicians that claims involving services beyond the MUE criteria should be supplemented with documentation of the circumstances prompting the number of services provided. The release might also prompt

educational opportunities in practices regarding methods of reducing claims entry errors (e.g., greater focus on legibility of numbers).

CMS has an opportunity to work collaboratively with physicians

The use of “black box” or undisclosed edits contributes to the overall mistrust and strained relationship that exists between Medicare and physicians. The Comprehensive Error Rate Testing Program finding of 3.8% overpayment in all Fee-for-Service Contractors in the 2007 Improper Medicare Fee-for-Service Payments Report does not indicate widespread fraud and abuse. Despite this, physicians often find that they must work within a healthcare system which assumes ill intent on their part due to the egregious acts of a very limited number of physicians and providers. Transparency of coverage policies and edits is necessary for collaboration and mutual respect.

Release may be required under the Freedom of Information Act

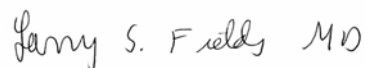
While we are not experts on this subject, it is also unclear that the MUE information meets any of the nine exemptions of the Freedom of Information Act (FOIA). If the information would be released under a request from FOIA, then any fraud and abuse containment effort associated with not publicly disclosing the edits is likely negligible.

Disadvantage of release appears unremarkable

The disadvantage of publicly releasing the MUE seems quite limited. The only obvious disadvantage is that knowledge of the edits may make it easier for the small number of truly unscrupulous providers to circumvent the edits. Undoubtedly, such persons will find other means of learning the edits, even if they are not readily available. It should be noted also that various other methods used by CMS and its contractors to identify patterns of abuse would seem likely to uncover a pattern of reporting the maximum number of services allowed under the edits on a repeated basis.

The Academy appreciates the opportunity to comment on this matter. We sincerely hope that CMS will consider the advantages of transparency and collaboration with physicians who diligently provide care to Medicare beneficiaries and make a concerted effort to comply with the regulations associated with the program.

Sincerely,



Larry Fields, M.D., FAAFP
Board Chair

Cc Valeria Allen, CMS COTR for NCCI/MUE