April 13, 2007

Center for Medicare & Medicaid Services
Office of Strategic
Operations and Regulatory Affairs
Division of Regulations Development-C
Attention: Bonnie L Harkless
Room C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Ms. Harkless,

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 Advanced Beneficiary Notice of Noncoverage.

Burden of ABN

We agree that the estimated burden to physicians should be updated in terms of the growth of Medicare and an increased estimate of the time spent in provision and completion of ABN forms. However, the total cost per notifier of $69.39 does not agree with the statistics provided and significantly underestimates the burden. If the 1.3 million notifiers will deliver 40,302,506 or 31.7 ABN's each per year as indicated in number 2 of the supporting statement and the estimated total cost of delivering the ABN's is $326,255,502.00, the burden would be $256.62 per notifier.

Besides not taking into account the cost of printing the ABN forms as noted under number 13 of the supporting statement, this estimate does not include the staff time spent in reviewing local and national coverage determinations to verify the need for an ABN. Resources are also required to scan or file the paper document into the patient record. Accounting for these additional burdens, the estimated burden for 31 forms per year is actually closer to $275.00 based on an additional 3 minutes of staff time per ABN.

We also feel that the estimated 31.7 ABN's per notifier is seriously underestimated for most family physicians. While some of the notifiers included in the 1.3 million may seldom deliver ABN's due to the nature of the services provided, for those who provide services with frequency limitations or other services for which an ABN is routinely necessary, the number of ABN's delivered will be higher by 50x to 150x. As Chapter 30, Section 40.3.6.4C of the Medicare Claims Processing Manual indicates, virtually all beneficiaries receiving frequency limited items and services may be at risk of having their claims denied in those circumstances. We would ask that CMS consider again the calculation of the estimated number of ABN's per notifier based on the consideration of whether certain types of notifiers would be known to have higher utilization.

To aid physicians who continue to provide care to the growing number of Medicare beneficiaries, we urge CMS to seek ways to lessen the administrative burdens associated with

Medicare wherever possible, including avoiding overuse of local and national coverage decisions. Each local and national coverage decision requires substantial administrative work to review, track and integrate into practice work flow. Local coverage decisions should be discouraged for purposes other than delineation of the evidence-based appropriate use of services which are new or for which frequent utilization outside of appropriate indications or frequencies have been identified.

Use of a Single ABN Form

While we appreciate the efficiencies which may be gained by using one form for both general and laboratory notifications, the current laboratory ABN form directs the patient to inform the ordering physician when they choose not to undergo testing. This instruction is pertinent to maintaining the physician-patient relationship and continuity of care. With Medicare patients often seeing multiple physicians in different practices, it is especially important that the patient contact their primary care physician when faced with a decision to forego recommended testing or pay out-of-pocket. This may become even more critical as Medicare moves toward value-based purchasing of physician services (i.e., pay-for-performance).

Therefore, if the one revised ABN is to be used for all non-coverage notifications, we recommend that Option 1 of Section G be revised as indicated in italic font below:

> **1. Do not provide me with anything listed above.** With no care provided, there is no billing. I understand that **I cannot appeal** to Medicare when choosing this option. *I agree to contact my primary care physician to discuss this decision and potential alternative care plan*s.

Use of ABN for Excluded Services

We also note that the instructions provided for the new ABN form state, "This version of the ABN must also be used in place of the Notice of Exclusion from Medicare Benefits (NEMB) to provide voluntarily notification of financial liability." We feel this is inappropriate for several reasons.

♦ Neither the current nor draft ABN forms include the specific information regarding services which are excluded under Medicare Part B as listed on the NEMB.

♦ Where a physician chooses to voluntarily use a written notification to ensure a Medicare beneficiary understands their financial responsibility for services excluded from Part B benefits, it is inappropriate for CMS to mandate the type of notice to be used for this purpose.

♦ A physician is under no obligation to file a claim for services which are never covered under Part B unless the patient has other insurance coverage which may provide benefits for the service. As the NEMB does not reference submission of a claim for the purpose of getting a Medicare determination, it is more appropriate to voluntary notification of financial liability.

Therefore, we request that this instruction be removed or edited to indicate the ABN may also be used in place of the Notice of Exclusion from Medicare Benefits (NEMB) to provide voluntarily notification of financial liability.

Patient's Right to Medicare Billing

We agree with the addition of the patient's right to have a potentially non-covered service billed to Medicare for determination of benefits. However, the notice as provided on the draft form may cause confusion as it is listed above the three options, only one of which provides for billing to Medicare. Based on this, we would again suggest revision as noted in italic font:

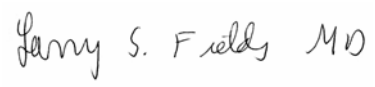
> **We must bill Medicare when you ask us to** *by choosing Option 3 below***.** We may help you with billing other insurance if you choose Option 2 or 3 below, though Medicare cannot require us to do this.

Patient Signature

For the sake of clarity, the field for patient signature on the revised ABN form should be further defined to indicate the signature should be that of the patient or the patient's representative. Where the patient is not able to write their name and is not accompanied by a representative, it should be clarified in the instructions that a witness to their mark (X) is satisfactory.

Thank you for the opportunity to comment on the proposed changes to the ABN form. We appreciate the opportunity to provide input on the administration of the Medicare program and look forward to continued communications.

Sincerely,



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