Utah Represented at the AAOS National Orthopaedic Leadership Conference

Report from E. Marc Mariani, M.D.
Washington, D.C.

Once again the Utah State Orthopaedic Society was represented at the AAOS National Conference held in Washington, D.C. April 20 – 22, 2005. My appreciation to Dr. Dennis Gordon and Dr. J. Lynn Smith for attending the conference with me and helping take the concerns of Utah orthopaedic surgeons to our respective congressmen and senators.

While in Washington, we met individually with Congressmen Chris Cannon, Rob Bishop and Jim Matheson, as well as Senators Robert P. Bennett and Orrin Hatch. All five of these gentlemen met with us individually and supported the four main issues brought to their attention through the Academy. These four items are as follow:

1) **Congressional action to fix the flawed Medicare remuneration formula.** The current formula utilizes the sustainable growth rate (SGR) for determining the annual Medicare payment to physicians. This formula has significant flaws causing steep reductions in physician’s reimbursement. Without congregational action, physicians face a payment cut of 5% a year from 2006 through 2012.

2) **Congressional assistance to pass comprehensive medical liability reform.** The medical liability crisis is creating patient access issues across the nation. The AAOS believes that Congress should pass meaningful federal medical liability reform that seeks caps on noneconomical damages at $250,000, allocates damages in proportion to fault, insures that the bulk of any award goes to the patients not attorneys, establishes expert witness standards, limits frivolous law suits and prevents preemption of effective state reform.

3) **Preserving the role of in-office imaging services.** There have been attempts by the Radiology Association to limit the ability of specialists who administer and interpret office based imaging services. The AAOS feels that orthopaedic surgery requires the use of in-office imaging services for efficiency and effectiveness of our patients. We asked our members of Congress to oppose any legislation that would place undue restrictions on the provision of in-office imaging services.

4) **Opposing Medicare beneficiaries direct access to physical therapists without first obtaining an evaluation and diagnosis from a physician.** The Medicare Patients’ Access to Physical Therapist Act (HR13-33/S647) would permit Medicare beneficiaries direct access to physical therapists without first obtaining an evaluation and diagnosis from a physician. The AAOS opposes this act. Our five representatives agreed that this Act would not be in the best interest of our patients. They all oppose this Act at this time.

**Contribute to the AAOS PAC as well as the Doctor’s for Medical Liability Reform (DMLR)**

Great strides have been made nationally in orthopaedics in terms of Contribution to the Orthopaedic PAC and DMLR. However, only 20% of orthopaedic surgeons are currently contributing to these entities. The AAOS now has full-time lobbyists in Washington as well as a Washington office. It is absolutely essential that we all support this legislative effort if we are to make progress on the important legislation as noted above. To that end it is critical that we contribute to the PAC and DMLR. We need to encourage each other to support these worthwhile entities that function on our behalf.
Relative Value Units
Medicare uses a resource-based relative value scale (RBRVS) to reimburse physicians. Under this system, medical services and procedures are ranked according to the relative costs of resources required to provide a service. Medicare implements RBRVS by assigning three different types of relative value units (RVUs) for every procedure listed on its fee schedule: an RVU for physician work, an RUV for practice expense, and an RVU for professional liability insurance.

The 2005 Medicare fee schedule incorporates over 2200 changes to practice expense RVUs based on recommendation made by the AMA/Specialty Society Practice Expense Advisory Committee (PEAC). PEAC refinements of practice expense inputs for many musculoskeletal procedures are incorporated into the 2005 fee schedule, and in a number of instances, this lead to a decrease in practice expense RVS. Changes in practice expense RVUs often create a noticeable change in payment rates for a given procedure because practice expense accounts for 43.6 percent of the reimbursement for a given procedure. The trend of decreasing practice expense RVUs for musculoskeletal procedures is mainly the result of Medicare’s decision to transition to resource-based practice expense RVUs. Medicare began the transition in 1998, and is close to completing this task.

On November 15, 2004, the Centers for Medicare and Medicaid Services (CMS) published its final rule for 2005 physician fee schedule, which includes several provisions that will affect reimbursement for musculoskeletal procedures. The final rule announces that the 2005 conversion factor will be $37.89, which is a 1.5 percent increase from 2004. As a result of this increase in conversion factor, payment rates for many orthopaedic services will increase slightly from 2004.

However, the payment rate for some musculoskeletal procedures might vary from the 1.5 percent increase because Medicare makes additional adjustments based on a number of other factors. For 2005, the key provisions of the final rule that altered payment rates for specific musculoskeletal procedures are: adjustments to practice expense and professional liability relative value units, the conversion factor, geographic practice cost indices, and physician scarcity area incentive payments.

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Note that the Board of Counselors opposes this maneuver. The Academy feels that attempts to contain the cost of implants “should not interfere with the surgeon’s goal of providing the highest quality care and serving the patient’s best interest. Further, the final authority for selecting implants should rest with the treating physician.” The Board of Counselors is resolved “that the American Association of Orthopaedic Surgeons be prepared to oppose the implementation of the proposed HCA three vendor program through whatever regulatory or governmental means are necessary. Such actions may include requesting the determination of submitting comments to the Office of the Inspector General.”

Note that we have locally fought this program here in Utah. For now HCA is not requiring that the choices be limited to these three manufacturers.

The AAOS Board of Counselors
Opposes Hospital Implant Restrictions and Gain Sharing Relationships

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When the transition of resource-based practice expense RVUs is complete, there will be fewer fluctuations in practice expense RVUs. Medicare also revised professional liability insurance RVUs for 2005. It adopted a specialty-weighted approach where professional liability insurance RVUs are based upon the weighted average of the risk factors for all specialties performing a given service. In addition, Medicare used updated data in calculating professional liability insurance RVUs. This included actual 2001 and 2002 malpractice premium data, projected 2003 premium data, and actual 2003 Medicare payment data on allowed services and charges, services under the Medicare fee schedule. Medicare states the conversion factor for 2005 will be $37.89, which is a 1.5 percent increase from last year’s update.

Medicare normally updates the conversion factor each year through a complex formula specifically defined by federal statute. Under this formula, the 2005 conversion factor would have decreased 3.3 percent. This cut was averted because Congress mandated in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 that the update to conversion factor for 2005 could not be less than 1.5 percent.

There are numerous problems with the conversion factor formula that have led to significantly lower Medicare payments for physicians over the last couple of years. The AAOS continues to lobby and actively seek ways to improve the conversion factor formula.

Five-Year Review

For 2005, Medicare did not make adjustments to physicians work RVUs for existing musculoskeletal procedures. However, it did announce the initiation of the five-year review, which is a process to identify misvalued physicians work RVUs. This five-year review represents the third time Medicare has undertaken this congressionally mandated review. For the upcoming five-year review, Medicare will revise undervalued RVUs for services and procedures identified by the medical community. In addition, Medicare has indicated it will also examine high-volume codes across all specialties where the procedure: 1) was previously performed in the in-patient setting, but is now performed predominantly on an outpatient basis; and 2) has no data or old data (i.e. procedures that have not been reviewed by the AMA/Specialty Society RVS Update Committee). The five-year review process is important because it affects physician work RVUs, which accounts for 52.5 percent of reimbursement for a given code. A change in physician work RVUs has a significant impact on reimbursement.

To illustrate the point, a 20 percent increase in the value of a physician work RVU will increase the overall reimbursement rate for a procedure by at least 10 percent. In contrast, a 20 percent increase in the value of a professional liability RVU will increase overall reimbursement for a given procedure by 0.6 percent.

The AAOS is a member of the AMA/Specialty Society Relative Value Scale Update Committee (RUC). The RUC is an advisory body to Medicare that makes RVU recommendations for annual updates to the fee schedule, as well as for the five-year review. The AAOS participates in RUC because it provides an opportunity to advocate on behalf of the orthopaedic community for appropriate payment rates for musculoskeletal procedures.

The AAOS has already begun preparing for the five-year review and has identified a number of undervalued musculoskeletal services within the fee schedule. However, the AAOS will need the help of its members to collect specific data that will be used to defend reimbursement rates for musculoskeletal procedures. For several months during 2005 the AAOS will be sending out surveys to collect data. If you receive a survey, it is vitally important for you to complete it because Medicare reimbursement rates for the surveyed procedures might decrease if the AAOS cannot collect sufficient data. The survey results will directly impact your Medicare reimbursement.
**Conversion Factor**

The conversion factor is a multiplier used to convert RVUs into a dollar amount reimbursement rate. A change in the conversion factor affects payment for all procedures.

- After the election in November send your legislators a short note congratulating them on their victory and offering to serve as a resource on orthopaedic issues as they arise.
- Follow that with a letter, call or meeting at the beginning of session outlining the orthopaedic society’s issues and concerns.

If orthopaedists lay this groundwork now then during the session we will be able to effectively present our case as a bill is about to be voted on. Amidst all the other correspondence and lobbying our message will stand out because the legislators will be able to put a name and a face with an orthopaedist in their district.

Like many things in our personal and professional lives, planning and preparation insures that the final outcome is satisfactory. So now is the time to start developing a relationship with your legislators. It will pay off again and again with benefits to you, your practice and your patients.

**Geographic Practice Cost Indices**

Medicare uses geographic cost indices (GPCIs) to adjust payment rates for medical services and procedures based on cost-of-living differences for 89 Medicare payment localities across the country. The 2005 final rule revised work and practice GPCIs. Work GPCIs are calculated using wage data from seven professions other than medicine. This wage data is then broken down by county, and used to calculate specific locality work GPCIs. Adjustments to work GPCIs incorporated recent data from the 2005 U.S. Census. Medicare updated practice expense GPCIs using the most recent employee wage and office rent indices.

To access the 2005 Medicine physician fee schedule final rule, go to:

http://www.cms.hhs.gov/providerupdate/newphysregs.asp