October 20, 2006

Leslie Norwalk, Esq.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW, #314-G
Washington, DC 20201

Dear Ms. Norwalk:

We, the undersigned associations and societies, are writing to alert you to problems that physicians continue to encounter with Medicare's consultation policy as outlined in Transmittal #788, published on December 20, 2005, and request your assistance in revising the policy.

Practicing physicians find that portions of the policy are both confusing and contrary to the typical practice of medicine. In particular, they have raised three issues associated with Medicare's consultations policy: split-shared billing, transfer of care, and documentation of consultations. We have outlined each issue, and proposed changes. We have also attached a revised version of Transmittal #788, which includes our suggested changes, for your consideration. We welcome the opportunity to review these suggested changes with you.

CMS' Policy Prohibiting Split-Shared Billing for Consultations

Since publication of Medicare's new consultations on December 20, 2005, which precludes split-shared billing for consultations, the Centers for Medicare and Medicaid Services (CMS) has asserted that it has "long-standing" policy prohibiting this practice. Prior to publication of Transmittal #788, however, CMS had not explicitly stated its policy on billing for split-shared consultations. This is evidenced by language posted to Medicare contractor HGSA's website prior to December 20, 2005 which stated:

> *"[as] of this posting, the Centers for Medicare and Medicaid Services (CMS) have not issued specific instructions regarding shared/split consultations. In the interim, it is the opinion of the HGSA Administrators and our Carrier Advisory Committee (CAC) members that consultations may be split between a non-physician practitioner and a physician."*

Thus, the new Medicare policy explicitly prohibiting inpatient split-shared billing came as a surprise to many, and appears to be based on certain incorrect assumptions. For instance, the new policy assumes that a physician or qualified non-physician practitioner (NPP) typically requests advice from only one physician or qualified NPP. Transmittal #788 states:

> *A consultation service is distinguished from other evaluation and management (E/M) visits because it is provided by a physician or qualified non-physician practitioner (NPP) whose opinion or advice regarding evaluation and/or management of a specific problem is requested by another physician or other appropriate source.*

This policy presents a number of challenges to physicians as it does not reflect current medical practice. Today, as with the delivery of many medical services, a team-based approach is often employed in conducting a consultation. This approach provides a higher quality of care for the

patient, allows the physician to see additional patients by having the NPP take on a portion of the patient's care, and fosters a collaborative approach to the practice of medicine.

That CMS' approach is inconsistent with the way medicine is practiced today is well illustrated in a hospital cancer ward. In such environments, an oncologist and a Certified Register Nurse Practitioner (CRNP) who are devoted to cancer care are often employed by the same oncology medical group practice. While the physician performs the majority of the work, the CRNP may obtain a patient's complete history, perform certain aspects of the medical exam, and order diagnostic tests and medications. Under Medicare's consultation policy, a physician is precluded from billing for a consultation if an NPP performed any portion of the care. Such an approach is unfair, and discourages collaborative, team-based treatment.

We are also concerned that CMS is basing their refusal to allow a consultation to be reported as a split/shared service on a misinterpretation of the American Medical Association's (AMA) *Current Procedural Terminology* (CPT) definition of a consultation. As shown by Transmittal #788, CMS considers consultations to be separate from other Evaluation and Management (E/M) service codes. However, the AMA's CPT book clearly designates consult codes as part of E/M services; not as a distinct category of services. In fact, there is no language in the CPT book that precludes split-shared billing.

CMS' interpretation is also inconsistent with the way it categorizes consultations in other areas of the Medicare program. For example, in the recently proposed rule released by CMS, *Medicare Program; Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule and Proposed Changes to the Practice Expense Methodology* (71 FR 37170), consultation codes are included with other E/M services, not as a distinct category of services. **Thus**, **we request that CMS recognize consultations as E/M services under Medicare Transmittal #788, and add language that specifically permits the practice of split-shared billing for consultations.**

Transfer of Care

We continue to have concerns about the language in Transmittal #788 regarding Medicare's policy on transfer of care from a referring physician or qualified NPP, to a consulting physician or qualified NPP. The current policy states:

> *A transfer of care occurs when a physician or qualified NPP requests that another physician or qualified NPP take over the responsibility for managing the patients' complete care for the condition (emphasis added) and does not expect to continue treating or caring for the patient for that condition.*
>
> *When this transfer is arranged, the requesting physician or qualified NPP is not asking for an opinion or advice to personally treat this patient and is not expecting to continue treating the patient for the condition (emphasis added). The receiving physician or qualified NPP shall document this transfer of the patient's care, to his/her service, in the patient's medical record or plan of care.*

The term, "complete care for the condition," has been the source of numerous inquiries from physicians. It is unclear whether this means that physicians performing consultations are precluded from billing for an initial consultation if any transfer of care is involved. We understand that the CPT Editorial Panel is reviewing coding clarifications regarding the use of

consult codes within the context of a transfer of care which would specify that a transfer of care does not preclude use of a consultation code.

While the complete care of a patient may be transferred from one physician (or qualified NPP) to another physician (or qualified NPP), the more common scenario is a complete transfer of care for the particular condition which necessitated the consultation. For example, a primary care physician may refer a patient with a skin condition to a dermatologist for a consultation regarding that condition. The dermatologist may determine, after examining the patient, s/he needs to continue to receive dermatological care. However, the patient's primary care continues to be handled by the referring physician. **Given this common scenario, we request CMS specify in Medicare Transmittal #788, that a consultant can bill for an initial consultation prior to the transfer of care for the condition that necessitated the consultation.**

Documentation

Presently, CMS' policy for documentation of consult codes, for both inpatient and outpatient services, calls for documentation in both the referring and consulting physicians' (or qualified NPP) medical record. The recent Office of the Inspector General (OIG) report, *Consultations in Medicare: Coding and Reimbursement*, published March, 2006, has worried physicians who perform consultations that they will be violating CMS policy if the referring physician fails to document a request for a consultation.

We recognize the importance of concise medical documentation. However, a consulting physician should not be penalized for a referring physician's (or qualified NPP's) failure to document a referral. A consulting physician (or qualified NPP) should be paid for his/her services so long as the service was medically necessary, it was not routine, and the consulting physician has submitted a written report to the referring physician (or qualified NPP). **Therefore, we urge CMS to clarify in Medicare Transmittal #788, that, if all other applicable requirements are met, consulting physicians shall be reimbursed irrespective of whether the referring physician (or qualified NPP) has made the appropriate documentation in the patients medical record.**

We thank you for your consideration of the suggested revisions to Transmittal #788 and welcome the opportunity to meet with you to discuss these changes.

Sincerely,

American Academy of Child and Adolescent Psychiatry
American Academy of Dermatology Association
American Academy of Facial, Plastic and Reconstructive Surgery
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Otolaryngic Allergy
American Academy of Otolaryngology-Head and Neck Surgery
American Academy of Physical Medicine and Rehabilitation
American Association for Thoracic Surgery
American Association of Clinical Endocrinologists
American Association of Clinical Urologists

American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American College of Cardiology
American College of Chest Physicians
American College of Occupational and Environmental Medicine
American College of Obstetricians and Gynecologists
American College of Osteopathic Internists
American College of Osteopathic Surgeons
American College of Physicians
American College of Rheumatology
American College of Surgeons
American Gastroenterological Association
American Geriatrics Society
American Medical Association
American Medical Directors Association
American Medical Group Association
American Osteopathic Academy of Orthopedics
American Osteopathic Association
American Psychiatric Association
American Society for Gastrointestinal Endoscopy
American Society for Reproductive Medicine
American Society of Anesthesiologists
American Society of Cataract and Refractive Surgery
American Society of Clinical Oncology
American Society of Hematology
American Society of Nephrology
American Thoracic Society
American Urological Association
Association of American Medical Colleges
Congress of Neurological Surgeons
Infectious Diseases Society of America
Joint Council of Allergy, Asthma and Immunology
Medical Group Management Association
National Association of Spine Specialists
Renal Physicians Association
Society of Critical Care Medicine
Society of Gynecologic Oncologists
Society of Hospital Medicine
Society of Thoracic Surgeons
The Endocrine Society