June 19, 2006

BY ELECTRONIC MAIL:

Mark B. McClellan, MD, PhD
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Room 3-4G
Washington, DC 20201

Re: Medically Unbelievable Edits

Dear Dr. McClellan:

The American Academy of Audiology appreciates the opportunity to comment on the Medically Unbelievable Edits (MUEs) for the Medicare program proposed by the Centers for Medicare & Medicaid Services (CMS). The Academy supports the goal of using edits to identify obvious errors in Medicare claims. However, some of the proposed edits for audiology procedures are seriously flawed resulting in audiologists receiving inappropriately low reimbursement not commensurate with the time and costs for providing the service(s) performed.

The MUEs should be used to identify clearly erroneous information in Medicare claims; however, utilization of the MUE should not result in financial penalty to the provider. The Academy understands the intent of the MUE, but Medicare must recognize that the provider cannot be expected to unfairly receive reduced Medicare reimbursement for covered services. The proposed edits for audiology procedures would significantly reduce Medicare reimbursement by restricting the number of units of service that may be billed in a single claim. Medicare must find another system that accomplishes the intent of the MUE without the provider incurring financial penalty.

We have identified the following problems with the proposed edits for audiology procedures:

- CPT 92533 (Reference No. 7595) and 92543 (Reference No. 7599)

Under the proposed edits, it appears that CMS would pay for only one unit of service (i.e., one irrigation) for CPT codes 92533 (caloric vestibular test) and 92543 (caloric vestibular test, with recording). Audiologists typically perform four irrigations, two in each ear. Each ear is irrigated at 86 degrees F (30 degrees C) and at 110 degrees F (44 degrees C). Artificial stimulation of the vestibular apparatus produces nystagmus and autonomic responses such as sweating, vomiting,

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hypotension, and bradycardia. The duration, velocity, and frequency of the nystagmus can then be measured to determine the patient's vestibular sensitivity.

Currently, Medicare recognizes each irrigation as a separate unit of service. Prior to 1998, Medicare had viewed one unit of CPT 92533 and 92543 as including up to four irrigations. In 1998, CMS changed its policy and decided that henceforth each irrigation would constitute one unit of service. At the same time, CMS reduced the reimbursement rate for CPT codes 92533 and 92543 to one quarter of what it would otherwise have been.\(^1\)

If CMS now limits coverage of CPT 92533 and 92543 to one irrigation, it would be effectively cutting reimbursement for these services by 75 percent. Four irrigations are needed to acquire a definitive ear-specific vestibular assessment. This change in reimbursement has the potential for compromising standard of care; another flaw of the MUE protocol. The Academy urges CMS to revise its proposal to provide that each irrigation may be billed as one unit of service.

- **CPT 92546 (Reference No. 7602)**

The Academy is concerned that the current reimbursement rate for this procedure is insufficient to justify purchasing the equipment needed to perform the procedure, Computerized Rotation or Computerized Sinusoidal Harmonic Acceleration, which costs roughly $100,000. This procedure, sinusoidal rotational test, makes it possible to assess the patient's balance function over a range of frequencies (usually up to seven frequencies). CMS should either increase the reimbursement rate for one unit of service or allow multiple units to be billed in a single claim.

- **CPT 92547 (Reference No. 7603)**

Under the proposal, CMS would pay for only one unit of service for CPT code 92547 (use of vertical electrodes). This code was originally intended as an add-on code to be billed if vertical electrodes are used as an additional recording channel during an electronystagmography (ENG) battery. Although add-on codes are supposed to be valued less than the primary procedures to which they relate, CMS originally valued CPT 92547 more than the ENG base codes (CPT codes 92541 through 92546). Because of this high reimbursement rate, the American Medical Association (AMA) issued an interim guidance providing that CPT 92547 should be billed only once per ENG battery.

In the 2005 Medicare physician fee schedule, CMS sharply reduced the reimbursement rate for CPT 92547. Recognizing that CPT 92547 is an add-on code, CMS cut its practice expense relative value units from 1.17 to 0.08 and its payment from $45.18 to $5.31. In doing so, the appropriate billing protocol for CPT 92547 is to bill it multiple times, i.e., once for each of the four base codes (CPT codes 92541, 92542, 92544, and 92545) and once for each caloric vestibular test (CPT code 92543 which, as discussed above, is typically performed four times). CMS left this

\(^1\) See 62 Fed. Reg. 33158, 33183 (June 18, 1997).
decision to the AMA’s CPT Editorial Panel. In early 2005, the AMA instructed providers and coders that CPT 92547 may be billed as an add-on code: "The vertical electrode recording rate (CPT 92547, an add-on procedure that is paired with a second procedure in billing) will reflect the actual time to perform the procedure. The fee will be $5.31, which can be billed multiple times as an add-on procedure in 2005, versus $45.18 in 2004 for the entire test battery."

If CMS were to limit coverage of CPT 92547 to one unit of service per claim, this would compromise the diagnostic value of the ENG test battery and would unfairly drastically reduce reimbursement for this procedure. Because CPT 92547 is recognized and valued as an add-on code, it should be billable as an add-on code, as well. The Academy urges CMS to revise the MUE proposal accordingly.

- **CPT 92621 (Reference No. 7661)**

  The proposed edits would limit billing of CPT code 92621 (evaluation of central auditory function, with report; each additional 15 minutes) to two units of service for a total of 30 minutes. This procedure frequently takes longer than 30 minutes. The tests are time-consuming because this service is often furnished to patients that need more time to complete tasks and audiologists must wait for the patient’s responses. The CMS proposal offers no explanation or support for restricting coverage of this procedure to two units of service. This appears to be a random decision with unfair consequences to the provider.

- **CPT 92627 (Reference No. 7664)**

  The proposal would limit billing of CPT code 92627 (evaluation of auditory rehabilitation status; each additional 15 minutes) to four units of service for a total of one hour. As noted above with respect to CPT 92621, this procedure frequently takes longer than the maximum time permitted to be billed under the proposal. The tests are time-consuming, because they are typically furnished to patients who need more time to complete tasks. CMS has provided no explanation or evidence supporting the proposed restriction to four units of service. Once again, this appears to be a random decision and the Academy requests that CMS recognizes the flawed implications of this MUE and implement a fair alternative.

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Although we are understanding of the intent of the MUE, it is the opinion of the Academy that the system unfairly penalizes the provider. We encourage CMS to work with the American Academy of Audiology to identify the flaws of the MUE and to resolve the inequities of the current MUE proposal that impact audiologists. The Academy appreciates CMS’ decision to delay

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2 "... CPT code descriptors and accompanying coding instructions are proprietary to CPT. We would encourage these organizations to discuss this issue directly with the CPT editorial committee." 69 Fed. Reg. 66236, 66245 (Nov. 15, 2004).
implementation of the MUEs to January 1, 2007 at the earliest and to work closely with the provider community in developing the edits. The Academy also appreciates CMS' announcement that it will consider the use of modifiers to allow payment for medically necessary services that are clinical outliers and that it will develop an appeals process to allow reconsideration of specific applications of the edits.\(^1\) We are ready to assist CMS in any way we can.

Respectfully submitted,

Gail M. Whitelaw, Ph.D.
President

\(^1\) Physician Regulatory Issues Team (FRIT), Details for Medically Unbelievable Edits (MUEs).