

substantial “spread” or a difference between the price that physicians and suppliers actually pay to acquire drugs in the market and Medicare’s reimbursement at 95 percent of list AWP, means that the Medicare program and Medicare beneficiaries often overpay for drugs. For a few drugs, the “spread” is so large that the amount that the Medicare beneficiary pays the physician or supplier for coinsurance is greater than the physician or supplier’s payment to acquire the drug. For example, leucovorin calcium (J0640) has a list AWP of \$18.44. Based on GAO and OIG studies, the widely available market price is 15 percent of the list AWP or \$2.77. The Medicare payment is 95 percent of the list AWP, or \$17.52. The beneficiary coinsurance is 20 percent of the Medicare payment or \$3.69. The beneficiary is paying more in coinsurance (\$3.69) than the physician is paying to purchase the drug (\$2.77).

#### *E. Studies and Developments Since the Balanced Budget Act of 1997 (BBA)*

This section discusses developments since BBA and provides an overview of some of the relevant studies that have been performed illustrating the excessive payments that occur under the current payment methodology.

In September 2000, the Medicare program attempted to allow carriers to consider data provided by DOJ as another and more accurate data source than the list AWP in the published compendia. The use of another data source would allow us to set more accurate AWP payment limits for certain drugs (Program Memorandum “An Additional Source of Average Wholesale Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program,” (AB-00-86, (change request #1232), published September 8, 2000). However, we deferred implementation of this program memorandum in November 2000 since, although we continued to believe that the list AWP reported in the published compendia was inaccurate and inflated, congressional action pending at that time would have precluded the immediate use of this data. We wanted to avoid the disruption that would result from a decrease in payment allowances followed by an immediate increase due to congressional action. In addition to the payment disruption, we also received numerous public comments asserting that drug payments for chemotherapy drugs subsidize payments for services related to the administration of these drugs. The deferral of the use of the DOJ data was published in our program memorandum titled, “Source of Average Wholesale

Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program,” AB-00-115 (change request #1447) published November 17, 2000.

In December 2000, the Congress enacted the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106-554). Section 429(a) of BIPA mandated that the GAO conduct a study on the payment for drugs under the current Medicare methodology. Section 429(c) established a moratorium on reductions in Medicare payments rates for drugs until after the Secretary reviewed the GAO report. In the study, the GAO was required to—

- Identify the average prices at which Medicare drugs are acquired by physicians and other suppliers;
- Quantify the difference between such average prices and the Medicare payment amount; and
- Determine the extent to which Medicare payment is adequate to compensate physicians, providers of services, or other suppliers of these drugs for costs incurred related to administrative costs of furnishing drugs and biologicals.

In addition, BIPA required the GAO to provide specific recommendations for revised methodologies for payment of drugs and for related services under the Medicare program. In making these recommendations, BIPA instructed the GAO to consider—

- If appropriate, new or adjusted payments for costs incurred in the administration, handling, or storage of certain categories of drugs;
- The method and amount of payment for similar drugs made by large group health plans;
- The potential for patients to receive inpatient or outpatient hospital services in lieu of services in a physician’s office as a result of any revised payment methodology;
- The effect of any revised payment methodology on the delivery of drug therapies by hospital outpatient departments; and
- The results of a previously mandated GAO study (GAO-02-053) on the adequacy of Medicare’s physician payments to oncologists.

Additionally, the Congress required that the GAO, in making their recommendations, “shall ensure that any proposed revised payment methodology be designed to ensure that Medicare beneficiaries continue to have appropriate access to health care services under the Medicare program.”

Section 429(b) of BIPA requires us, notwithstanding any other provision of law, to revise the Medicare payment methodology for drugs under sections

1842(o) of the Act based on the GAO report to the Congress. We may, to the extent appropriate, provide new or adjusted payments for the costs incurred in the administration, handling, and storage of drugs. However, the estimated aggregate payments for drugs under the revised system (including additional payments for the administration, handling, and storage of drugs) cannot exceed payments as projected by the Secretary under section 1842(o) of the Act.

Prior to the completion of the GAO report, the OIG published a report in January 2001 titled “Medicare Reimbursement of Prescription Drugs” (OEI-03-00-00310) that revealed excessive payments for Medicare covered drugs. This study was a follow-up to a prior 1997 OIG Study: “Excessive Medicare Payments for Prescription Drugs” (OEI-03-97-00290) in which the OIG found that payments based on 95 percent of list AWP were substantially greater than the prices widely available to the physician community. In this January 2001 study, the OIG compared calendar year (CY) 1999 Medicare payments for 24 high expenditure drugs to prices available to the physician and supplier community, the Department of Veterans Affairs (VA), and Medicaid. In determining the prices available to the physician supplier community, the OIG reviewed print and online catalogs from five drug wholesalers and one group purchasing organization. The report indicated that we would have saved \$761 million a year by paying for drugs based on the actual wholesale prices available to physicians and suppliers rather than paying 95 percent of list AWP.

In September 2001, the GAO presented its study to the Congress in a report titled, “Medicare: Payments for Covered Outpatient Drugs Exceed Providers’ Costs” (GAO-01-1118). The report contained some significant findings and also confirmed previous OIG reports on drug payments.

- Physicians and suppliers are able to obtain Medicare-covered drugs at prices significantly below 95 percent of list AWP. (See Table 1 in Appendix A for a reprint of the table from the GAO report summarizing some of these findings.)

- For most physician-administered drugs, the average discount from list AWP ranged from 13 percent to 34 percent; two physician-administered drugs had discounts of 65 and 86 percent. That is, physicians paid an average of 66 to 87 percent of the list AWP, and for two drugs physicians paid 14 percent and 35 percent of the list AWP.