

furnishing Medicare covered drugs and seek comment on the applicability of these payments under each of our four options for reforming the current payment system.

1. Proposed Changes in Physician Fee Schedule Payment for the Administration of Medicare Covered Drugs

a. SMS and Supplemental Survey Data

An important element in calculation of the practice expense relative value units (RVUs) for all services paid using the physician fee schedule is specialty-specific practice expenses per hour of patient care. We use the American Medical Association's (AMA's) Socioeconomic Monitoring System (SMS) survey of actual aggregate cost data by specialty as the major source of data for these expenses per hour. However, not every specialty is included in the SMS data and several other specialties have commented that the SMS data were not adequately representative of the costs incurred by their specialty. (63 FR 58824–58826) Section 212 of the Balanced Budget Refinement Act of 1999 (BBRA) directed us to establish a process under which we would accept and use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by organizations. In an interim final rule published on May 3, 2000 (65 FR 25664) we set forth our criteria for accepting such supplemental surveys. In the December 31, 2002 **Federal Register** that contained the 2003 physician fee schedule final rule (67 FR 79972), in response to comments, we made some modifications to these criteria. In this year's physician schedule proposed rule (68 FR 49030), we proposed changes to the deadline for submitting supplemental survey information to our contractor, the Lewin Group.

Using the SMS data, we calculated a total practice expense per hour of \$99.30 for oncology. We are currently using this practice expense per hour for CMS specialty codes 83 (Hematology/Oncology) and 90 (Medical Oncology). However, the American Society of Clinical Oncology (ASCO) submitted a supplemental survey in 2002 with a practice expense per hour of \$189.00. In the 2003 physician fee schedule final rule (67 FR 79973), we discussed the practice expense survey submitted by the ASCO. Although the survey met our stated criteria, we did not use it in the calculation of the 2003 practice expense RVUs because of concerns about the data. Our contractor, the Lewin Group evaluated the data and indicated that

average compensation (including salaries and fringes) for clinical and administrative staff reported in the ASCO survey averaged \$71,014 and \$87,253 respectively and appear inconsistent with other available data on wage rates for such staff. Furthermore, the Lewin Group indicated that the category of "other professional expenses" was 349 percent higher than the SMS survey. The Lewin Group suggested that we seek an explanation for the high values in the ASCO survey before incorporating it into the practice expense methodology. In the December 31, 2002 physician fee schedule final rule we indicated that we intended to meet with ASCO to discuss our concerns and that we would consider using the data in the future if our concerns were addressed. We have subsequently held such discussions with ASCO and understand that the high values for average compensation for clinical and administrative staff are largely due to a limited number of practices with very high values that raise the average values calculated across all respondents to the survey. At this time, we are proposing to incorporate the survey into the methodology. Since our practice has been to use all survey data and not eliminate practices with high values, we are including all respondents in the supplemental practice expense per hour.

As we note in more detail below, section 429(b) authorizes the Secretary to provide for adjustments to payments for the costs incurred in the administration of certain categories of drugs. While we believe the provision allows the Secretary to make changes to practice expense payments in a non-budget neutral manner, we also believe that it anticipates that the Secretary will make adjustments to payments for drug administration services at the same time the Secretary revises the payment methodology for drugs. Otherwise, we would be unable to compare the aggregate costs of the changes authorized by section 429. We are, therefore, proposing only to incorporate the oncology survey data into the practice expense methodology at the same time proposed changes in Medicare payment for drugs are adopted.

ASCO, the GAO, and OIG have all indicated that Medicare overpays for drugs and revisions to the payment methodology for drugs should coincide with increase in practice expense payments for drug administration services. In testimony before the House Ways and Means Committee on October 3, 2002, ASCO acknowledged the need

for comprehensive reform of Medicare payment for drugs and physician practice expenses. ASCO testified:

We do not relish being targets for those who correctly point out that some drugs are reimbursed by Medicare at a rate that exceeds the acquisition cost * * * reform must be comprehensive, encompassing both overpayments for drugs and underpayments for the costs of administering the drugs.

The GAO echoed this view in testimony before the House Energy and Commerce Subcommittee on Health Oversight and Investigations on September 21, 2001 testifying: "it should be a principle of Medicare payment policy to pay for each service appropriately." OIG testified:

Our reports have shown time after time that Medicare pays too much for drugs * * * We agree that physicians need to be properly reimbursed for patient care. However, we do not believe that the payment of artificially inflated drug prices is an appropriate mechanism to compensate them.

At the same hearing, Subcommittee Chair James C. Greenwood stated:

We will need to develop a solution that results in Medicare paying prices for drugs that are closer to the actual prices paid by health care providers. Similarly we will need to take steps to ensure that health care providers are sufficiently reimbursed for all of their services.

Furthermore, we remain concerned about high practice expense per hour values from the ASCO survey. Even when practices with extremely high values are eliminated from the calculations, the supplemental survey practice expense per hour would remain 174 percent higher than the all physician average and more than 45 percent higher than the next highest specialty. We will continue investigating why oncology practice expenses would be so far above other specialties. For the reasons above, we believe the supplemental survey should only be incorporated into the practice expense methodology at the same time that Medicare revises the payment methodology for drugs.

b. Weight Averaging Supplemental Survey and SMS Data

When we use supplemental survey data, we have generally blended the supplemental data with SMS data for the specialty in order to use the maximum number of survey responses in calculating a practice expense per hour. However, the argument has been made that specialty societies would only undertake a survey because of the belief that the existing SMS data were not sufficiently representative of the specialty's practice expenses. According to this argument, blending the