

*Comment:* We received comments from a number of physician organizations opposing any adjustment to the physician work RVUs. Several of the comments appreciated our reluctance to reduce the physician fee schedule conversion factor by an additional 0.3 percentage points when there will already be a large reduction in the physician fee schedule update. One commenter stated that any additional reduction to the physician fee schedule conversion factor would be inappropriate. However, these comments also stated that the physician work RVUs should remain constant and stable. There were a number of comments that stated that across-the-board adjustments should never be applied to the work component of the Resource Based Relative Value System. One comment indicated that we should not make any adjustments to the work RVUs unless they are recommended by the RUC. Several of the comments stated that the proposed adjustments to the RVUs to match the MEI weights would not assist the physician community in addressing the professional liability crisis since any increase in physician fees for some services will be offset by reductions in other services. Additional payments by Medicare to cover increased professional liability costs, or congressional action, are necessary to alleviate this problem. Some of the comments indicated that CMS did not provide sufficient information to make a determination as to how the two proposals would affect individual codes because the adjustments were not applied to the RVUs shown in Addendum B of the proposed rule. Several of the comments stated that the stability of work RVUs is essential since they are used by private payors, physician compensation systems, and in productivity analysis. The RUC commented that they depend upon the stability in these values as they review new and revised codes, both in magnitude estimation and in any calculations regarding intra-work per unit of time (IWPUT). One comment suggested CMS create a separate adjustment factor to adjust payments without changing the conversion factor or the RVUs, as it did for the first five-year review of the Medicare physician fee schedule in 1995. We also received a comment urging us to review the Secretary's "ancillary policies" authority under section 1848(c)(4) of Act to determine whether CMS has statutory authority to increase PLI relative value units without reducing

the work and practice expense relative value units.

We also received several comments that expressed support for maintaining stability in the practice expense RVUs. The comment stated "much like what is done with work relative values, any code-level refinements due to annual coding changes that result in a non-budget neutral impact should not result in a reduction of all practice expense relative values. The comment requested that CMS present an analysis of this issue in an upcoming proposed rule and recommended that adjustments related to the MEI rebasing not be applied to the practice expense relative values.

*Response:* We share the concern about establishing stability in the practice expense RVUs. As we indicated in the June 28, 2002 proposed rule (67 FR 43851), "once the refinement process is complete, we believe the physician community has a reasonable expectation that the practice expense RVUs will not change from year to year unless further refinement is undertaken." We plan to analyze in an upcoming proposed rule whether there are any alternatives to our current practice of rescaling the practice expense RVUs to apply budget neutrality. However, we disagree with the comments that suggest we only increase the malpractice expense RVUs and not apply any adjustments to the work and practice expense RVUs to match the MEI weights. It is not possible to match the aggregate RVUs to the new MEI weights if we make no adjustments to both work and practice expense and adjust only the malpractice RVUs and the conversion factor. While it would be possible to maintain budget neutrality for the increase in malpractice RVUs by reducing the conversion factor, the aggregate number of RVUs for work and practice expense would not match the MEI weights unless we could adjust at least two of the three RVUs in combination with applying a compensating adjustment to the CF.

We have considered the comment suggesting that we use the Secretary's section 1848(c) "ancillary" policies authority to adjust the RVUs to match the MEI weights but not maintain budget neutrality. Section 1848(c) states that the Secretary may establish ancillary policies (with respect to the use of modifiers, local codes, and other matters) as may be necessary to implement this section." We believe that this section of the statute must, nonetheless, be read consistently with the requirements of section 1848(c)(2)(B)(ii)(II) of the Act requiring that changes to RVUs cannot cause the amount of expenditures to increase or decrease by more than \$20 million from

the amount of expenditures that would have been made if such adjustments had not been made. We believe the statute is clear and any increase in the malpractice expense RVUs must be offset by decreases to the work and practice expense RVUs or the conversion factor.

We also do not believe that the work RVUs should be maintained and a separate "work adjustor" established. While such policy was adopted following the 5-year review of physician work in 1997, we used this procedure only because the effect of the work adjustor could be removed once resource-based practice expense RVUs were adopted in 1999. We did not find the work adjustor to be desirable. It added an extra element to the physician fee schedule payment calculation and created confusion and questions among the public who had difficulty using the RVUs determine a payment amount that matched the amount actually paid by Medicare.

We acknowledge the comments that indicate that the work RVUs are used for many purposes other than Medicare payment. While our proposal would slightly reduce the absolute value of the physician work RVUs, it would not change their relative values since there would be a uniform decrease to all of the RVUs. We believe the relative relationship among the values for the services makes them useful for analysis for purposes other than Medicare payment. Since the relative values will be left unchanged, we do not believe the work RVUs will lose their utility for these other uses.

We disagree that our proposed rule did not provide enough information upon which to determine the impact on payment for a given service. The proposed rule provided the specific level of the estimated adjustments. While we did not actually apply the adjustments to the RVUs shown in Addendum B, any interested party could determine the effect of our proposal on any given service with the information we provided. We further noted that the adjustments we provided were estimated and would change once we made final determinations of the work, practice expense and malpractice RVUs for 2004. For the final rule, we will reduce the work RVUs by 0.57 percent (0.9943), the practice expense by 0.77 (0.9923) percent and increase the malpractice RVUs by 19.86 percent (1.1986). We have also modeled the impact of our proposal by specialty in the impact section of this final rule.

With respect to the comments about our proposal and the large increases in professional liability premiums, we