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VIA ELECTRONIC MAIL

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Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1503-P

Re: CMS-1503-P Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011

Ladies and Gentlemen:

We are submitting comments regarding the above-referenced Proposed Rule with respect to a proposed policy change that would adversely affect ambulance providers and suppliers (collectively "ambulance services") and the patients that they serve. Specifically, we are requesting that CMS reconsider the proposed policy change that would require ambulance services to report fractional mileage on ambulance claims. If implemented, the proposed change would have a considerable negative impact on reimbursement for ambulance services during a time when many ambulance services are struggling to maintain existence.

Ambulance services stand in a unique position among Medicare providers as the primary gateway to the healthcare system for many Medicare beneficiaries. Their role is becoming increasingly significant as more Americans gain access to health insurance coverage through the Healthcare Reform Bill. For the reasons outlined in this letter, we respectfully request that CMS not implement the new fractional mileage policy and instead continue its current policy of allowing ambulance services to round up their loaded mileage to the next whole mile.

Brief Overview of Our Firm

Page, Wolfberg & Wirth, LLC is a law firm with a practice limited to the representation of ambulance services and emergency medical services (EMS) agencies. We represent over 1,000 ambulance services across the United States in the nonprofit, for-profit and public sectors. We also represent many EMS billing companies and other organizations which serve the nation's ambulance industry. Medicare compliance and reimbursement issues constitute the predominant part of our practice. In addition, we are regular columnists and contributing authors in many of the national ambulance industry publications, and the attorneys and consultants of our firm collectively give over 100 presentations every year on issues of concern to the industry, including Medicare compliance and reimbursement. Our founding partners have also been active EMTs, paramedics and ambulance service administrators over the years.

Comments on the Proposed Rule

1. Implementation of the New Fractional Mileage Policy will Decrease Reimbursement for Ambulance Services and Patient Access to Healthcare

The implementation of the proposed policy for reporting fractional mileage units will have a substantial negative effect on ambulance Medicare reimbursement that could impair access to healthcare for many Americans. CMS is proposing to renege on its longstanding, formal policy (established by Transmittal AB-00-88) that allows ambulance services to "round up" fractional mileage to the nearest whole number. Instead, services would be required to report mileage to the nearest tenth of a mile. CMS anticipates that the new policy could generate *at least* $45 million a year in "Medicare savings" for base mileage billed by suppliers, and potentially as much as **$80 million per year** when considering other types of ambulance mileage payments. Because the policy change will substantially decrease already inadequate Medicare reimbursement for ambulance services, it will decrease access to care as more ambulance services cut back on or discontinue financially unsustainable services.

Ambulance services depend heavily on Medicare reimbursement to sustain their operations, maintain readiness standards, and to help ensure continuing overall availability of ambulance services to the general population. Many, if not most, ambulance services operate at very slim margins (and some at negative margins, with deficits made up by local subsidies in some cases) and would surely be even further negatively impacted by the implementation of this new policy. In May, 2007 the General Accountability Office (GAO) released a report entitled "Ambulance Providers: Costs and Expected Medicare Margins Vary Greatly." The report emphasized that Medicare reimbursement rates may negatively affect access to ambulance services in "super rural" areas of the country. The report also found that a majority of ambulance services in the United States may have "negative Medicare margins," meaning that the fee schedule rates do not adequately compensate them for their costs of doing business. This proposed policy change would further compound this problem at a time when ambulance services

are being subjected to other significant decreases in Medicare reimbursement as well as reimbursement from other payers.

Under the CY 2010 Ambulance Fees Schedule (AFS), ambulance services did not receive any increase in Medicare reimbursement rates from 2009. When taking into account recently rising inflation during the first quarter of 2010, this is the equivalent of a net decrease in reimbursement during this calendar year. The AFS no longer allows ambulance services to bill separately for ancillary charges (such as oxygen, disposable supplies, etc.), so mileage charges are the only way left for ambulance services to recover increasing, variable costs. Fuel and vehicle maintenance costs are the highest operational costs for ambulance services, other than personnel.

Further, the Patient Protection and Affordable Care Act of 2010 (ACA) now requires that the update factor under the AFS, be reduced each year by "the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity" (the "MFP adjustment"). When applied to the AFS, the MFP adjustment will substantially reduce the AFS update amount and result in systemic reductions in reimbursement for the ambulance industry. Currently, the ambulance inflation factor (AIF) is updated annually by the percentage "increase" in the consumer price index for all urban consumers (CPI-Urban). Under the current formula, Medicare reimbursement rates for ambulance services can never decrease from year to year (although they could stay the same, as they did for CY 2010, if the CPI-U is zero or a negative number). Under the ACA, the AIF would be "reduced" by the MFP adjustment, and the ACA expressly allows for a negative update in AFS reimbursement rates. This means that reimbursement rates could *decrease* from the previous year. CMS estimates that the application of the MFP to the AFS would result in a reduction in Medicare reimbursement to ambulance services of around **$30 million** in calendar year 2011 alone.

The MFP adjustment is supposed to take into account "efficiencies" that are realized by ambulance services through things like new technologies and economies of scale. In other words, CMS believes that providers and suppliers should (theoretically) become more efficient as they continue to operate, and therefore require less reimbursement to run their operations. However, many ambulance services are small operations (many are volunteer and non-profit organizations) that are still utilizing dated equipment and software because they lack sufficient funds to obtain these efficiencies. Many ambulance services still rely on handwritten patient care reports. While other "professionals" and "hospitals" are eligible to receive incentive payments from the Medicare program under the American Recovery and Reinvestment Act of 2009 for acquiring electronic health records, ambulance services remain one of the few ineligible Medicare providers. Hence, ambulance services are put in the untenable position of having to comply with unfunded mandates on already woefully deficient reimbursement dollars.

This unwarranted policy change also comes amidst national recession and sustained high, volatile fuel costs. Municipalities across the United States are cutting

back on subsidies and other types of financial assistance for ambulance services as they strive to balance budgets and avoid layoffs.

Without adequate reimbursement from Medicare, many ambulance services, especially those in rural and super-rural areas, would cease to stay in business. Fewer ambulance services would mean a decrease in overall availability of ambulance services for everyone, potentially contributing to delays in access to critical healthcare services. Not to mention, this overall reduction in reimbursement is being proposed at a time when the American population will be seeking care in our emergency rooms at an increasing rate. The expected thrust of 32 million more Americans into the ranks of the health-insured population, coupled with a shortage of primary care physicians, will lead to increased utilization of emergency rooms and further magnify and enlarge the role of ambulance services as a primary gateway to the healthcare system.

A policy change that could decrease reimbursement to the struggling ambulance industry by tens of millions of dollars is both untimely and irresponsible.

2. *CMS's Stated Premise Behind the Change in Policy is Unreasonable and Unfounded*

CMS cites several reasons for this new policy and states that the change was primarily motivated by a "concern" expressed by several ambulance suppliers who believed CMS's instructions to round up mileage required them to bill "inaccurately." We believe the asserted impetus behind this policy change to be a pretext for a veiled effort to justify a reduction in Medicare reimbursement rates. This rationale is wholly unsupported and has no basis in reason.

CMS explicitly acknowledges that it instructed ambulance providers and suppliers to round fractional mileage amounts "up to the nearest whole mile" and to enter "1" for fractional mileage totaling less than one mile in Transmittal AB-00-88, issued on September 18, 2000. CMS states in the Proposed Rule that: "our instructions clearly state that providers and suppliers should, as a matter of procedure, round up fractional mileage amounts to the nearest whole mile." Yet, CMS asserts that "some providers and suppliers indicated that they wanted to bill as accurately as possible and that they only wanted to be paid for the service they actually provided." If services were truly concerned with billing as accurately as possible, they should have been instructed by CMS to bill in accordance with applicable Medicare guidance, Transmittal AB-00-88. Yet, CMS proceeds to manipulate the remarks of a few providers as justification for the policy change in the hope that such unrepresentative comments will validate the otherwise unjustified change.

The failure of CMS and its contractors to adequately educate providers and suppliers about its longstanding policy on rounding up to the next whole mile should not be cited as a credible reason to abandon this policy in the interest of saving money. If CMS is truly interested in assuaging ambulance services concerned about rounding up their fractional mileage claims, it should formalize its longstanding "rounding up" policy from

AB-00-88 and put *this* policy in the regulations. That would have the effect of reinforcing to those concerned providers and suppliers that rounding up is appropriate while avoiding economic detriment to the industry as a whole.

3. Many Ambulance Services Do Not have the Capability to Track Fractional Mileage and Therefore Cannot Comply With the Policy Change

In addition, CMS improperly assumes that most ambulance services have the capability of recording mileage to the nearest tenth of a mile, and therefore the ability to comply with the policy change. CMS states that technological advancements in the claims processing system now make it possible for the system to capture and process fractional units. Additionally, CMS states that "both analog and digital vehicle odometers are designed to measure mileage accurately to within a minimum of a tenth of a mile." However, in our discussion with numerous ambulance services across the United States, we have discovered that a significant number of ambulance services are not able to track mileage to the nearest tenth of a mile. Many newer vehicles have odometers that simply do not display tenths of a mile. Hence, ambulance services risk being out of compliance with CMS's policy *requiring* the reporting of mileage to the nearest tenth of a mile, if they are unable to track the mileage.

The fact that many services cannot track fractional mileage eliminates one of the primary reasons for the policy change. CMS states that it considered whether ambulance providers and suppliers have the capability to measure fractional mileage because "if providers and suppliers are not able to measure mileage with any more specificity than the nearest whole number mile, then there would be no need to modify the current procedure for billing fractional mileage. In that case, providers and suppliers would continue to report mileage as whole numbers since they could measure no more accurately than that." CMS goes on to state that both analog and digital motor vehicle odometers are designed to measure mileage accurately to within a minimum of a tenth of a mile, but offers no empirical data to support this conclusion. We ask that CMS, at a minimum, establish verifiable proof for the assertion that most providers are able to track mileage to this degree of certainty. Otherwise, this justification for the policy change is invalid.

One final concern with respect to those ambulance services who utilize analog odometers that do track fractional mileage. If the final number of the odometer is starting to turn, but is not yet displaying the next whole mile, the service is now stuck in the untenable position of having to decide how to most "accurately" bill for the mileage. The service would likely be limited to rounding down, as it could not determine, with any degree of certainty, the exact mileage to bill. This further adds to the net loss to the industry at a time when this critical piece of the healthcare industry can ill-afford such further cuts.

4. The Proposed Policy Change Would Create Other Administrative Burdens for the Ambulance Service Industry

The proposed policy on fractional mileage would also create additional and inconsistent administrative burdens for ambulance services. Many payers and state/local laws follow Medicare rules regarding reimbursement. As such, some payers, including third party payers and Medicaid, require ambulance services to round up and report whole numbers when reporting mileage for reimbursement purposes. Under the proposed policy, ambulance services would be forced to closely monitor secondary payer requirements and to submit different mileage amounts to avoid non-compliance with other payer rules. Further, because many state and local laws require ambulance services to round up mileage when submitting claims, the proposed change would create inconsistent legal requirements for ambulance services. It would place them in the untenable position of having to disobey state or local law in order to comply with the new policy.

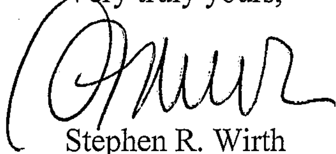
Finally, the proposed policy change would create inconsistent rules for Part A providers and Part B ambulance suppliers, as Part A providers are currently unable to report fractional mileage units on either paper or electronic claims. Part A Providers lack the means to comply with the policy change and stand to receive different reimbursement amounts than Part B suppliers for the transports of the same distance. Further, CMS has offered no guidance about how it will apply to the policy to organizations that are simply unable to comply with it.

Conclusion

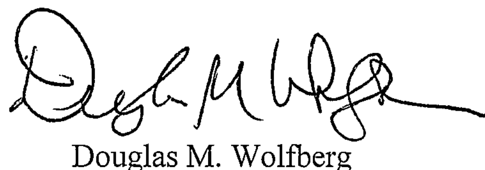
We hope that CMS will understand the potential widespread implications of this policy change and the devastating impact it would have on many ambulance services who provide an essential service to patients across the United States, many of whom are Medicare beneficiaries. We request that CMS continue its longstanding policy by allowing ambulance services to round up mileage for ambulance services. Mileage is a variable cost for ambulance services, subject to market forces and unpredictable fluxes. Maintaining the current policy would keep tens of millions of critical Medicare dollars going to support the viability of an increasingly indispensible component of the healthcare system.

We appreciate the opportunity to offer our comments on the Proposed Rule.

Very truly yours,



Stephen R. Wirth



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