December 10, 2001

Ms. Christy Schmidt  
Executive Coordinator  
Secretary’s Advisory Committee on Regulatory Reform  
Office of the Assistant Secretary for Planning and Evaluation  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC  20201

Dear Ms. Schmidt:

The American College of Physicians–American Society of Internal Medicine (ACP–ASIM), representing over 115,000 physicians who practice internal medicine and medical students, wishes to express its support for the Secretary’s Advisory Committee on Regulatory Reform and would welcome the opportunity to present testimony to the committee on ways to reduce the Medicare regulatory burden on physicians. In this vein, we have attached a list of key issues we would like to present to the committee when it schedules a hearing; we would appreciate being advised of when such a hearing will be held at your earliest convenience.

ACP–ASIM looks forward to playing an active and ongoing role in the important mission of the Secretary’s Advisory Committee on Regulatory Reform, and hopes we will soon be able to present our concerns directly to the committee in the near future. Please contact John DuMoulin, Director of Managed Care and Regulatory Affairs, at (202) 261-4544 to address any questions concerning this correspondence and to schedule providing College testimony when a meeting date for the committee is set.

Sincerely,

C. Anderson Hedberg, MD, FACP  
Chair  
Medical Services Committee

Attachment
Attachment—Key Areas Requiring Medicare Regulatory Reform

1. Overwhelming Regulatory Volume

It is impossible for physicians to keep abreast of the vast, ever expanding and ever changing array of Medicare rules, regulations, instructions, and policies. This information is disseminated from many sources and is often difficult to accurately comprehend and interpret. A promised resource compendium for physicians of all pertinent Medicare rules, regulations, policies, and carrier local medical review policies—to be put together as a joint effort of the Centers for Medicare and Medicaid Services (CMS) and the Department of Health and Human Services (DHHS) Office of Inspector General (OIG) has now been abandoned—clearly a sign of how daunting gathering such a vast amount of information is. If the regulating agencies can’t put this huge package together, with all the resources at their disposal, it is obvious a dramatic reduction in regulatory volume and complexity is long overdue.

2. Need to Revise the Methodology for Updating Medicare Payments to Physicians

The present methodology for updating Medicare physician payments is flawed and has caused a steady decline in Medicare physician reimbursement relative to costs over the last several years. While physician costs continue to rise, the Centers for Medicare and Medicaid Services (CMS) are slashing physician payments 5.4% in 2002. This trend threatens beneficiary access to needed, high quality services. In particular, CMS should: (a) revise the Medicare economic index (MEI) so that it accurately accounts for physician practice costs—including those related to regulatory compliance, and eliminate the “productivity adjustments” which further lower physician payments based on arbitrary assumptions; and (b) replace the sustainable growth rate (SGR) system with a system that accurately tracks true practice costs based on current rather than outdated data.

3. Documentation Requirements for Evaluation and Management Services

ACP–ASIM is pleased that Secretary Thompson has established a work group of practicing physicians to take a fresh look at documentation requirements for evaluation and management services, with the goal of keeping such documentation to a minimum, thereby freeing up more time for patient care.

4. Federal Enforcement Activities

Despite recent efforts of OIG to cast physicians in a more positive light, the vast majority of physicians feel they are distrusted by the government, with the massive amount of resources DHHS pours into its fraud and abuse activities. This includes scrutiny by Medicare carriers, program safeguard contractors, peer review organizations, state survey agencies, OIG auditors, and the Department of Justice. Considering the volumes of Medicare rules and regulations physicians must comply with, ACP–ASIM would urge DHHS to reduce the magnitude and tighten the focus of such activities so that they are truly aimed at finding the rare physician who intentionally attempts to defraud Medicare, and not punish physicians who make honest mistakes trying to comply with the reams of ever-changing Medicare rules and requirements. When there
are professional differences between a physician and carrier over a particular claim, DHHS should mandate carriers to work directly with physicians to achieve agreement, before resorting to more aggressive measures such as pre- or post-payment review, or referring the matter to OIG for further investigation.

5. Improvements to the Carrier Medical Review Process

Carriers’ extrapolation of overpayments based on small probe samples is objectionable on a number of bases. As noted above, it is impossible for physicians to keep abreast of the thousands of pages of ever-changing Medicare rules and regulations, and CMS has not done an adequate job of educating physicians on the blithering array of Medicare requirements. Thus, physicians often are unaware of what standards and requirements they are being measured against. Second, extrapolating overpayments based on very small probe samples lacks statistical validity. Third, it is patently unfair that physicians, in order to appeal a carrier’s overpayment determination, must pay the full amount of overpayment demanded, which creates a substantial economic barrier to utilizing the appeals process, and drives many honest physicians into settling with a carrier due to lack of resources. ACP–ASIM asserts that, before physicians can be held accountable for being overpaid, CMS must take responsibility for ensuring they are thoroughly educated and kept up to date on Medicare requirements, and carriers must inform physicians when and why their claims are being sampled. There must be ample opportunity provided for physicians and carriers to discuss and rectify professional differences on possible overpayments before formalizing an overpayment request, and such requests should be based on actual claims reviewed, not extrapolation of a small sample. Lastly, physicians must be able to appeal overpayment requests without any economic barriers which might preclude due process or force settlement with carriers to avoid practice disruption.

6. Office of Civil Rights Requirements for Persons with Limited English Proficiency

Physicians are being asked to have translators in their offices to deal with patients with limited English proficiency. While physician pay is being cut by Medicare, this represents a substantial new cost to physicians which, though mandated by federal law, is totally unfunded. This requirement should be rescinded and replaced with something much more realistic which is easily incorporated into the workings of a practice, with minimal cost and disruption.

7. Delay Regulatory Revisions to the Emergency Medical Treatment and Active Labor Act (EMTALA)

Congress has been sensitive to the fact that the scope of EMTALA has, through promulgation of ever more demanding regulatory requirements, expanded far beyond the original intent of this statute. This had led to congressionally mandated Government Accounting Office studies of EMTALA’s impact on providers and patients, and the Secretary calling for establishment of a multidisciplinary group of private and public sector representatives to address EMTALA problems. ACP–ASIM is pleased that the Secretary has acknowledged the need to make changes in EMTALA, but urges him to act immediately to bring this group into existence so that it can start addressing EMTALA issues.
8. DHHS Rules on Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act (HIPAA)

ACP–ASIM recommends that the implementation date for all provisions of HIPAA be set at 2 years after the last final rule is published. The piecemeal way regulations for various components of HIPAA are being issued is confusing for physicians and makes compliance difficult and costly. We also find the final Privacy rule creates unreasonable and costly demands on physicians in assuring compliance of their Business Associates.

9. CMS Final Rule on Use of Restraints and Seclusion in Psychiatric Facilities Under Medicaid

ACP–ASIM recommends that the latest interim final rule for psychiatric residential treatment centers be rescinded and that a revised more reasonable and consistent policy for use of restraints and seclusion be issued for all such facilities, not just those under Medicaid. This could be achieved by convening a special workgroup of affected physicians and providers that serve such patients.

10. Physician Enrollment in Medicare

ACP–ASIM would urge CMS, in its forthcoming plans to issue a proposed rule requiring all physicians to formally enroll in Medicare and periodically update their enrollment data, to ensure that this application and enrollment process is kept simple, and does not add a significant paperwork burden for maintaining a Medicare provider number.

11. Possible Contraction of the Waived Testing Category Under the Clinical Laboratory Improvements Act (CLIA)

With CMS assuming responsibility from the Food and Drug Administration for determining which laboratory tests fall into the “waived” category and thus not subject to more regulation and oversight, ACP–ASIM would urge DHHS to assure none of the test now categorized as waived are removed from this category, avoiding an additional burden of physician office laboratories.

12. Other Rules and Areas of Concern

ACP–ASIM would also ask DHHS to review and reduce the regulatory burden placed on physicians by the Physician Self-Referral (Stark) Rules. We would also ask DHHS to oppose current plans to eliminate or reduce the number of Carrier Medical Directors and Carrier Advisory Committees. Lastly, we would ask DHHS for more active support of the Correct Coding Initiative.