

# Legal Q/A

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**Q:** *What are some of the more significant changes affecting practicing physicians under the Medicare Prescription Drug, Improvement and Modernization Act that was recently passed?*

**A:** Fortunately, the new law gives physicians at least temporary relief from the negative update of the Medicare conversion factor. Instead of a -4.5% adjustment in the conversion factor for 2004 and another small adjustment in 2005, physicians will receive a 1.5% increase in the payment rates for the next two years, representing a +6% total improvement in payment from that required by current law.

The reassignment rules have also been substantially relaxed. Previously, an employee could reassign the right to receive Medicare reimbursement to an employer. And an independent contracting physician could reassign to a facility or group practice if the physician rendered services on the premises of the facility or group. Under the new law, the only requirement for reassignment will be a contractual arrangement between the physician and the other party. This will, for example, allow

radiologists to reassign for global billing purposes in cases where the radiologist does not perform professional interpretations on the premises of the group practice or facility.

Congress has also sought a new approach towards the development of clear, workable evaluation and management (E&M) guidelines for coding of claims. The reform act reflects the long-standing dissatisfaction with the documentation guidelines and attempts to head off another unsatisfactory set of guidelines by imposing specific controls on Medicare. New guidelines cannot be issued unless (1) practicing physicians have been involved; (2) a specific schedule is developed for improving the use of the guidelines; (3) pilot projects have been undertaken to test proposed modifications to the current guidelines; (4) established objectives have been met by the new guidelines; and (5) an appropriate education program has been undertaken to familiarize practitioners with the new guidelines.

The new law scales back some of the remedies available to Medicare where an overpayment to a physician is suspected. If repayment within 30 days would constitute a hardship, Medicare must enter into a repay-

ment plan for a period of between 6 months and 3 years, or up to 5 years in the case of extreme hardship.

There is an exception if the physician is likely to file bankruptcy soon, or if there is an indication of fraud or abuse.

Finally, new limitations are imposed on the ability of Medicare to use extrapolation to determine overpayments. Specifically, the legislation limits the ability of Medicare to use

extrapolation in situations where: (1) there is sustained or high level of payment error; or (2) documented educational intervention failed to correct the payment error.

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