



# American Urological Association

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March 24, 2006

Mark B. McClellan, MD, PhD  
Administrator  
Centers for Medicare and Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Dr. McClellan:

On behalf of the American Urological Association (AUA), representing 10,000 practicing urologists in the United States, we wish to express our deep concern with the Medically Unbelievable Edit (MUE) initiative.

We would like to address our concerns with the proposed edits on a number of levels. Per the information distributed previously to the national medical specialty societies by the American Medical Association, we will have very specific code-level comments we need to bring to your attention. However, we do not feel comfortable commenting on specific code issues at this time as there still seems to be a great deal of uncertainty as to how the edits will be implemented. We would like to focus our comments at this point on overall concerns with timing and process.

**TIMELINE & DISTRIBUTION:** Although the AMA received the original file from CMS in mid-October, this file was not distributed to the national medical specialty societies for comment until early December. The original file contained only radiology and pathology CPT codes, so due to the apparent narrow scope of the MUEs and the timing of the distribution, many specialties failed to realize the potential impact the MUE initiative could have on patient care and reimbursement. A second file was then distributed by the AMA in mid-January which contained all of the surgical CPT codes, E&M services and HCPCS codes. The instructions provided by the AMA lent some clarity as to what CMS was seeking in terms of comments, however still seemed very vague and confusing. While we are grateful that CMS has extended the deadline for comments an additional 60 days, we still think that more information is needed in order to respond to this initiative at the code specific level.



[www.aua2006.org](http://www.aua2006.org)

**PURPOSE:** Although the recent clarification has indicated that the purpose of the edits is to prevent payment of obviously erroneous Medicare claims submissions, the edits proposed thus far seem to be incongruous with that purpose. CMS had previously indicated that the proposed edits were supposed to be set so high as to preclude the need for a modifier or an appeals process. However, based on the file distributed to specialties for review, this does not appear to be the case. Also, CMS has not indicated how the proposed edits were generated, was this based on current claims data? It would seem helpful if CMS could elucidate the purpose of the initiative and the source of the proposed edits. We would also strongly suggest that data be made available to those groups who have been solicited for comments.

While we understand the need for accurate claims reporting and payment, we also are concerned that organized medicine may be expending a great deal of effort on looking at the entire universe of CPT codes when the reporting errors are actually confined to a much smaller universe of certain service/procedure codes. It would be very helpful to the entire process if CMS could review the source data and stratify the data by the volume of “errors” per CPT code and the potential reimbursement impact of the alleged “errors”. We would also strongly suggest wider distribution of the HCPCS supply code MUE edits as these would primarily impact providers of DME. While in some cases, this may include physician practices who are DME providers, physician practices represent only a percentage of those who provide DME to patients.

**PROCESS & IMPLEMENTATION:** We are very concerned that implementation of the proposed edits could have a significant impact on healthcare. We are appreciative that CMS has indicated in its recent clarification that the edits will go through several public comment periods and will work actively with the provider community. However, we remain concerned about the implementation of the edits and the timing of the implementation. Will CMS distribute a proposed final MUE list for specialties to review prior to implementation? In cases where coding changes may be necessary in order for the proposed MUE edits to be accurate such as with surgical pathology, has any consideration been given to the implementation date of the MUE edits and the CPT editorial process? We think it would be extremely unworkable for specialties to have to report a series of G codes due to poor synchronization by CMS with the CPT process as some affected codes may be reported in significant volume such as surgical pathology. Although CMS has recently clarified that it will consider the use of modifiers and work to develop an appeals process, when will those decisions be made—prior to or subsequent to MUE implementation? The CMS recent communication indicates that these edits are not “meant as Medicare payment policy, but only to identify obvious billing mistakes.”

However, if there is no modifier(s) from the start, nor an established appeals process, CMS will in some cases be reducing payment inappropriately. Why would CMS not have a process similar to CCI where proposed changes in volume edits could be reviewed and appealed by a specialty society? We are concerned that despite thorough review of the proposed edits, that once implemented there will be no national appeal process for those cases where the edit thresholds are set too low.

We would strongly recommend that CMS consider a temporary modifier similar to the GB modifier used during the initial implementation of the National Correct Coding Initiative. This would allow CMS to gather data as to what edits might still need to be smoothed out. This data could then be shared with the appropriate specialty groups for validation and appropriate adjustments made to affected MUE edits.

It is also our understanding that the reason many supplies and DME were included in the proposed edits is that CMS plans to make these edits available to private third party payers. If so, when would third party payers have access to this information and shouldn't there be a period of at least a year after implementation that CMS would work with specialty societies to ensure that the edits as implemented were correct?

#### **OTHER CONCERNS:**

We are also confused as to the application of the MUE edits to an entire claim per date of service. For repeat procedures for example, one would expect to see a two-line claim entry with the same CPT code but with a modifier -78 or -79 indicating that the second procedure needed to be repeated by the same or a different physician. Will these modifiers disappear from the reporting process? The same concern arises with bilateral procedures and the use of the bilateral procedure modifier (-50).

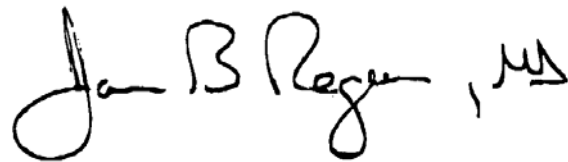
While our organization has attempted to comply with the current deadline for submission of specific comments, we would like to take this opportunity to express concern with the current process for providing comments, as well as the scant guidance as to how those comments will be reviewed. In cases where there appear to be major problems with the edits, such as surgical pathology, the proposed edits could have a significant negative impact on patient care.

Our organization would be happy to work with the agency and the medical community to assist in a process and methodology that will ensure appropriate payment and quality care. We sincerely hope that the agency will consider the importance of this initiative and not move too hastily toward implementation without thoughtful consideration of the impact on patient care.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. A. Dann".

Jeffrey A. Dann, M.D.  
AUA Coding & Reimbursement Committee  
Chair

A handwritten signature in black ink, appearing to read "James B. Regan, M.D.".

James B. Regan, M.D.  
AUA Health Policy Council  
Chair