

valuation of services being straightforward, the reduction of errors in PE valuation, and the facilitation of research, quality improvement and utilization tracking. However, there would be an associated increase in the volume of claims to be processed.

One commenter suggested that we meet with stakeholders prior to implementing such a change, while another commenter urged us to conduct a study on impact of revising the global surgical concept.

Response: We appreciate these comments and suggestions and will consider these along with additional information as we continue to study this issue.

3. Budget Neutrality

As discussed in the June 29, 2006 proposed notice, section 1848(c)(2)(B)(ii) of the Act requires that increases or decreases in RVUs for a year may not cause the amount of expenditures for the year to differ by more than \$20 million from what expenditures would have been in the absence of these changes. If this threshold is exceeded, we must make adjustments to preserve budget neutrality (BN). This year, we expected that BN adjustments would be required as a result of changes in RVUs resulting from the 5-Year Review. We considered making the statutorily required BN adjustments (under section

1848(c)(2)(B)(ii)(II) of the Act) to account for the 5-Year Review of physician work by reducing all work RVUs. We estimated that all work RVUs would have to have been reduced by 10 percent under this option. Alternatively, we considered making an adjustment to the PFS CF to meet the provisions of section 1848(c)(2)(B)(ii)(II) of the Act. This option would have required an estimated 5 percent reduction to the CF. We also noted that the application of the BN adjustments to the CF would negatively impact all PFS services; whereas the application of the BN adjustment to the work RVUs would impact only those services that have physician work RVUs. Because the need for BN adjustment would be largely due to changes proposed as a result of the 5-Year Review of work RVUs, we believed it was more equitable to apply the adjustment across services that have work RVUs. We proposed to establish a BN adjustor that would reduce all work RVUs by an estimated 10 percent to meet the BN provisions of section 1848(c)(2)(B)(ii)(II) of the Act.

Comment: We received numerous comments on this issue. Many of the commenters were opposed to our proposal and requested that the adjustment be made to the CF for the following reasons:

(1) Applying the BN adjustor to all work RVUs has been problematic in the past.

(2) By imposing the full burden of BN on the pool of work values, we would be significantly mitigating the improved accuracy of the values that have now been assigned to E/M services.

(3) This approach obfuscates the recommended changes of the RUC and could potentially have an inappropriate effect on relativity.

(4) The application of a separate work adjustor is not consistent with our goal of cost transparency and may adversely affect payments by non-Medicare payers.

These commenters, which include the AMA, the RUC, and the AMA-HCPAC, asserted that applying the BN adjustor to the work RVUs is contrary to our longstanding policy. In addition, they do not believe that we provided an adequate rationale for shifting to this new approach, which we have previously stated is neither appropriate, nor effective.

These associations noted that when in the past we applied a BN adjustor to the work RVUs, it caused considerable confusion among many non-Medicare payers, as well as physician practices that use the Medicare relative values as efficiency measures, and that the constant fluctuations

in the work RVUs due to BN adjustments impeded the process of establishing work RVUs for new and revised services.

In addition to these objections, numerous specialty societies, organizations, groups, and providers also indicated that an adjustment to the CF is preferable because it would recognize that BN is mandated for monetary reasons. Thus, the CF, as the monetary multiplier in the Medicare payment formula, is the most appropriate place to adjust for BN.

A number of commenters, including representatives of some radiology and oncology providers, were supportive of our proposal because it fairly applies the required BN adjustment to the portion of the fee schedule that was the subject of review.

A few commenters also stated that although the BN adjustment methodology set forth in the June 29, 2006 proposed notice is not ideal, they believe that it is the best of the available alternatives under the circumstances (71 FR 37241). These commenters also believe that making all BN and scaling adjustments on a fee-schedule-wide basis would apparently result in unacceptable fee-schedule-wide reductions and is clearly inequitable for TC services.

Another commenter urged us to delay the implementation of the BN adjustor for 1 year to allow more time to explore

ways to increase recognition of E/M services without imposing such a financial hardship on select physician and nonphysician providers and to allow physicians and nonphysicians the opportunity to work with us to suggest alternative approaches.

Other commenters also discussed the interaction of the application of the BN adjustment and the DRA OPD cap on imaging services. As required by the DRA, reductions in imaging payments because of the OPD cap result in actual savings to the Medicare program (that is, they are not done in a budget neutral manner). The commenters note that if the BN is applied to the CF and not to the work RVUs, then the impact of the DRA cap on total Medicare spending is lower. This is because applying BN to the CF will narrow the payment differential between imaging services furnished in physicians' offices and hospital OPDs, and thus reduce the effect of the DRA cap on payments for imaging services.

Response: We appreciate the information presented by the commenters. We do not have the authority to delay implementing the BN adjustment and we must apply a BNF to offset the increases in work RVUs effective for 2007.

We are very appreciative of the work the RUC and the specialty societies have done in the past several years to prepare for this 5-Year Review. As a result of their

dedication and analysis, the work RVUs are now more accurate and reflective of the time and resources associated with them. We do not believe that applying the BN on the work RVUs would undermine or diminish the RUC or specialty societies' contributions or the resulting improvements.

Section 1848(c)(2)(B)(ii)(II) of the Act requires a BN adjustment. Regardless of whether the BN is achieved by applying an adjustment factor to the work RVUs, as we proposed in the proposed rule, or the CF, which is the preferred option of many of the commenters, the values associated with the work ultimately will be decreased.

Therefore, we do not agree with the commenters' suggestions that applying the BN to the work RVUs would do the system a great harm. Specifically, we disagree that it would significantly reverse the improved accuracy of the values that have now been assigned to E/M services. Further, we do not think that this approach would distort the relativity of the RVUs. Because such an adjustment is uniformly applied to all the work RVUs, it does not alter the relationship among them.

We also note that this rule finalizes a change in the PE methodology. Changes to the PE RVUs are being budget neutralized within those PE RVUs. Applying BN adjustments

at this time, within each set of RVUs, maintains equity and helps to ensure that the weights between work, PE and malpractice are consistent with the weighting used in the MEI.

Therefore, for the reasons discussed above in this section, we will be applying the statutorily-required BN adjustment to the work RVUs as proposed in the proposed rule. We note that we previously applied a separate adjustor to the work RVUs following the first 5-Year Review of physician work in 1997. We understand that many commenters would find it preferable for us to make the required BN adjustment to the CF. However, we believe the best and most equitable approach to applying BN for this 5-Year Review of work is to adjust the work RVUs for 2007 using a separate adjustor for those RVUs. Achieving BN by adjusting the CF would have the effect of reducing payment for all services on the fee schedule. This would include reductions to RVUs for a number of services that have no physician work and were, therefore, outside the scope of the 5-Year Review. We believe it would be unfair, given the significant negative update to the CF this year, to impose additional reductions resulting from the BN adjustment on codes that have no work values associated with them.

We share the commenters' concerns about transparency and recognize the Medicare PFS is used by other payors and for other purposes than just Medicare payments. To maintain a high level of transparency in the fee schedule, the Addendum B published in this rule will show the RVUs without the BN adjustment applied. This will serve as a reference for any interested party and should help to minimize any confusion about the unadjusted codes. There also is a discussion of the BN work adjustor and the payment formula for 2007 included in the section IX. of this final rule with comment period, "Anesthesia and Physician Fee Schedule Conversion Factors for 2007." Payment for services will be calculated as follows:

$$\text{Payment} = \frac{[(\text{RVU work} \times \text{BN adjustor} \times \text{GPCI work}) + (\text{RVU PE} \times \text{GPCI PE}) + (\text{RVU malpractice} \times \text{GPCI malpractice})]}{\times \text{CF.}}$$

We appreciate the commenters pointing out to us that the approach used in applying BN has an interactive effect with the DRA imaging OPD cap and has an effect on the total Medicare spending on physicians' services. However, as previously described in this section, we continue to believe the most equitable way to adjust for changes in the work RVUs resulting from the 5-Year Review is to apply a BN adjuster to work RVU.