

## 2009 Physician Fee Schedule Updates: Are the changes addressed in your physician agreements?

Effective January 1, 2009, the Centers for Medicare and Medicaid Services ("CMS") implemented the 2009 Physician Fee Schedule ("PFS"). As with each update to the PFS, this new schedule contains revisions to the various components of Relative Value Units ("RVUs"), as well as a 1.1% increase in payment rates. The 2009 PFS also changes the method in which the Budget Neutrality Adjustment ("BNA") is applied to the payment calculation.

The 2008 Medicare Improvements for Patients and Providers Act ("MIPPA") that precluded the implementation of a 10.6% reduction in PFS payment rates in mid-2008 also called for a 1.1% increase in payments for 2009. However, MIPPA required that the BNA be applied to the conversion factor instead of to the work RVU ("wRVU") component of the payment calculation. As a result of these changes, the 2009 conversion factor decreased to \$36.0666 from the 2008 value of \$38.0870.

The projected effect of these changes on common specialties is mixed. In general, we note that the 2009 changes impacted favorably specialties for which the wRVU component of reimbursement represents a higher weighting than the practice expense component (*e.g.*, hospital-based specialties such as anesthesiology, critical care and emergency medicine). Conversely, those specialties with a higher practice expense component (*e.g.*, office based specialties such as cardiology, medical oncology, orthopedic surgery, and radiation oncology) are impacted negatively by the new application of the BNA to their practice expense component.

### FMV Pitfall

Employment arrangements that include production-based compensation may be affected inadvertently by changes to the PFS. We observe numerous employment arrangements wherein physicians' base and/or incentive compensation is tied to pre-established wRVU milestones. In using wRVUs to establish base and/or incentive compensation, the parties generally rely on expected consistency in the wRVU "yardstick." However, as the 2008 and 2009 PFS changes demonstrate, the yardstick can and does change, and well intentioned employment agreements can have unintended consequences.

We recommend the following:

- With respect to new employment agreements, the agreement should specifically address how changes in the PFS will be handled in determining physicians' base and/or incentive compensation.
- With respect to existing employment agreements, the compensation payable under the agreement should be reviewed to determine if unintended favorable or unfavorable consequences have occurred solely as a result of changes to the PFS.