



TO: Karen Winkel
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FROM: Dr. Norm Cohen
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RE: Proposed Rules on Chapter 836, Out of Network Reimbursement

The Oregon Society of Anesthesiologists (OSA), has participated in multiple workgroups on balance billing over the last several years. Largely, Dr. Norm Cohen and Sian Williams have represented the OSA during these efforts, and the Society greatly appreciates both having the opportunity to participate, and the dedication of the Department (DCBS) to find a fair and balanced solution that protects patients, and protects fair contract negotiations between providers and insurers.

After reviewing the proposed rules, the Society would like to provide the following comments and suggestions:

- **Geographic Rating Areas:** The OSA strongly agrees with DCBS' recommendation to split the State into seven different rating areas. This would be much more equitable for physicians in certain zones, particularly those in rural areas, whose reimbursement rate looks much different from those in Portland, or even Salem.

Notably, the alternative proposal to split the state into only two areas based on CMS method is both outdated and arbitrary. The CMS method essentially splits the state into "Portland" and "Not Portland", and fails to take into account the many diverse communities that make up the rest of Oregon.

- **CPI-U Adjustments for Inflation:** The OSA understands the limitations that DCBS is facing in terms of outdated data. However, we do not agree that a reasonable solution is to allow the inflation rates to lag by a year, which would unfairly impact providers. Instead, the OSA suggests adjusting the formula to account for the lack of data for the most recent year by averaging the data from the other years available. The formula to estimate the missing year's data could be:
 - $(2015 \text{ rate from database} * (1+2015 \text{ inflation})*(1+2016 \text{ inflation})*(1+2017 \text{ inflation})*(1+2018 \text{ inflation}))/4$
- **OB Anesthesia:** OB is an anomaly in the billing and reimbursement world, and payments for neuraxial blocks have widely varying payment schedules, making it more difficult to identify the fairest solution. Complicating things further, a cesarean section after epidural is an add-on code, so it may complicate total payments. However, straight cesarean sections without a previous block can be handled like the other anesthesia services.

It seems that the most fair and transparent option for calculating an out of network reimbursement schedule for OB anesthesia would be to calculate the mean epidural payment, and set that as the out of network rate. Additionally, the Department could calculate the mean epidural + cesarean section rate and let that be a flat fee as well.

- **AD Modifier:** The AD modifier is reported very rarely. It means that the anesthesiologist exceeded 1:4 coverage on a case. Medicare pays 3 units + 1 unit if present at induction. Other payers handle it by either ignoring it, or typically following Medicare rules. Dr. Cohen has a care team practice at OHSU, and even at OHSU's busy practice, they report AD far less than 1% of the time. We believe it is probably safe to ignore AD for purposes of the surprise billing rules

Again, the OSA appreciates the opportunity to participate in the workgroup efforts, and we look forward to a continued partnership with DCBS when the reimbursement rate is up for further legislative review in 2020.