



**Michael D. Maves, MD, MBA**, Executive Vice President, CEO

August 27, 2008

Mr. Kerry N. Weems  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Room 314-G Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Re: CAG-00402N, Surgery on Wrong Body Part; CAG-00403N, Surgery on the Wrong Patient; and CAG-00401N, Wrong Surgery Performed on a Patient (July 31, 2008).

Dear Acting Administrator Weems:

On behalf of the physician and medical student members of the American Medical Association (AMA), we appreciate the opportunity to provide comments concerning the Centers for Medicare and Medicaid Services' (CMS) plans to develop three new National Coverage Determinations (NCDs) that address Medicare coverage of certain surgical procedures, including surgery on the wrong body part, surgery on the wrong patient, and wrong surgery performed on a patient.

Medicare NCDs set national policy on whether Medicare will cover an item or service and under what conditions. The AMA does not believe that it is appropriate for CMS to use the NCD process to address its concerns regarding the aforementioned surgical procedures. It would make more sense to develop a clear payment policy outlining the circumstances under which surgery claims would not be payable by Medicare. For example, if a physician failed to use commonly accepted patient safety practices which resulted in surgery on a wrong body part, a Medicare carrier might deny partial or complete payment for the service claim. The issue at question is not whether surgical procedures will be covered by the Medicare program, but rather under what circumstances the payment for covered surgical procedures will be denied or reduced. Further, because of the many nuances surrounding these surgical conditions, it is important that any payment policy determinations include an appeals process for physicians and hospitals to petition any decisions that they believe were made inappropriately.

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We understand CMS typically initiates a coverage review process due to questions about the evidence behind the clinical effectiveness of a service, conflicting local coverage policies, or medical advances in the care or diagnosis of a disease or condition. None of the three surgical conditions presents an issue that would qualify them for development of a NCD. **Therefore, we urge CMS to not move forward in the development of new NCDs for these conditions, but rather to explore options for revising Medicare payment policies associated with these three surgical conditions.** For example, CMS has established payment polices to address coding edits, as well as global and multiple surgery policy.

The AMA appreciates the opportunity to comment, and we look forward to working with CMS to achieve consensus on the foregoing matters. If you should have questions regarding this correspondence, please contact Jennifer Shevchek, Assistant Director, Federal Affairs, at 202-789-4688, or [jennifer.shevchek@ama-assn.org](mailto:jennifer.shevchek@ama-assn.org).

Sincerely,



Michael D. Maves, MD, MBA