

May 25, 2021

Jessica Farb  
Director, Health Care  
U.S. Government Accountability Office  
441 G Street NW  
Washington DC 20548

**Re: Inadequate Medicare Payment Rates for Anesthesia Services**

Sent via email: [farbj@gao.gov](mailto:farbj@gao.gov)

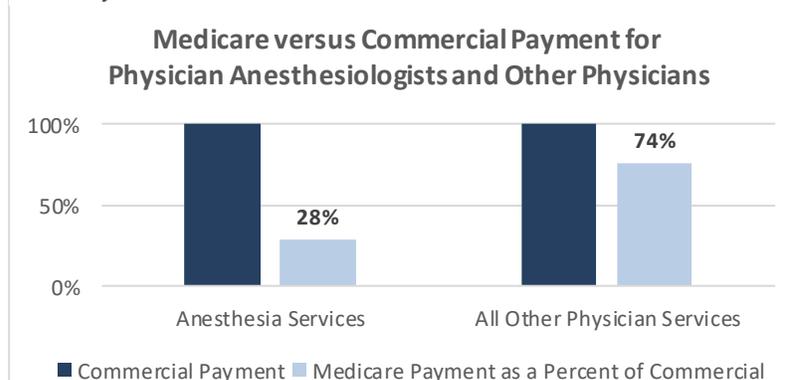
Dear Ms. Farb:

The American Society of Anesthesiologists (ASA) commends Congress for its interest in evaluating the differences in payment between private payer and Medicare rates for anesthesia services, as this is a critical issue impacting the nation’s physician anesthesiologists. ASA appreciates the recent efforts of the Government Accountability Office (GAO) following congressional direction to issue the report titled, *Anesthesia Services: Differences between Private and Medicare Payments Likely Due to Providers’ Strong Negotiating Position* ([GAO-21-41](#)) released in October 2020. The report is a follow-up to the GAO’s July 2007 report, *Medicare Physician Payments: Medicare and Private Payment Differences for Anesthesia Services* ([GAO-07-463](#)) which evaluates differences in payment rates for anesthesia services between Medicare and private payers and how these differences have changed in the interval. In this letter, we discuss the findings and conclusions of the GAO report, provide additional information, and raise awareness among congressional leaders about the increasing payment differential for physician anesthesiologists’ professional services between Medicare and the private marketplace.

**Medicare Payments Are Significantly Lower than Private Payer Payments for Physician Anesthesiologists Services, and the Gap is Widening**

ASA agrees with the GAO’s findings that Medicare payment rates for physician anesthesia services are substantially lower than the rates established by the commercial marketplace and that this gap has increased since its previous report. The report highlights how anesthesia services are uniquely disadvantaged by Medicare’s low payment rates. The 2020 GAO report shows that Medicare rates are only **28%** of the commercial rates for anesthesia services—i.e., 72% lower than private marketplace rates (Figure 1). This compelling finding is consistent with several recent studies that evaluated Medicare payment rates using a variety of methodologies. The GAO’s report reveals that the significant payment gap has widened since 2007. The

Figure 1. Medicare and Commercial Payment Rates for Anesthesia and Other Physician Services



Source: *Anesthesia Services: Differences between Private and Medicare Payments Likely Due to Providers’ Strong Negotiating Position* (2020). United States Government Accountability Office. <https://www.gao.gov/assets/gao-21-41.pdf>

GAO compares the gap between Medicare payments and private payer rates for physician anesthesia services versus all other physician services by referencing a 2019 MedPAC report that estimated Medicare payments for all other physician services to be 74% of average commercial payments—26% lower than private marketplace rates.

**Commercial Payment Set at Appropriate Market Rate**

The GAO report implies that the difference in payment for physician anesthesiologist services between Medicare and private payers is the result of commercial rates being too high due to physician anesthesiologists’ strong negotiation power. Contrary to this assertion, physician anesthesiologists, like many physician specialties, must negotiate with payers. These market-driven negotiations do not result in overpayment for anesthesia services but instead produce appropriate payment rates based on current market conditions. In contrast, there is no negotiation with Medicare. Medicare rates are not market-driven, but instead are determined by legislation and regulation and heavily influenced by budgetary constraints. These rates have not even kept up with inflation, providing further evidence that the rates are not realistic for sustaining the market demands.

Private payers negotiate payment rates with physician anesthesiologists as they do with physicians practicing within other specialties. In contrast, this competitive market-driven approach to payment is absent within Medicare in which the Centers for Medicare and Medicaid Services (CMS) establish the Medicare payment amount for health care services. There is no evidence that private payers would or do pay for services at rates higher than the current market value. In the aggregate, physician anesthesiologists just do not have that type of leverage over private payers. The negotiation power of physician anesthesiologists in the commercial market empowers physicians to ensure prices are appropriately set. Commercial insurers are rational actors in the health care marketplace. It is not reasonable to conclude that they are consistently overpaying for anesthesia services.

ASA believes the gap between Medicare and private payer rates reflects private payers’ having adopted rates that reflect the appropriate market value for anesthesia services, while Medicare’s administratively set rate structure does not reflect the true costs of providing anesthesia services.

Data indicate that private payers often have greater negotiating power than providers. Health plans and health insurers have substantial bargaining power when they control a significant market share and can

channel a large number of patients and services to a network of providers willing to accept lower payment rates. Research demonstrates that insurers with greater than 15% market share were able to negotiate prices for certain services 21% lower than insurers with less than 5% market share.<sup>1</sup> In 2014, the Commonwealth Fund evaluated the national market concentration among the top four largest health insurers. Table 1 summarizes the findings. Of the four largest insurers, two were above the 15% market share and the other two insurers had greater than 10% market share—all having

Table 1. National Market Share of the Top Four Private Insurers in the U.S.

Insurer	Percent National Market Share (2014)
Blue Cross/Blue Shield	37%
Anthem	15%
United Healthcare	13%
Aetna	11%

Source: Roberts, E. T., Chernew, M. E., & McWilliams, J. M. (2017). Market share matters: Evidence of insurer and provider bargaining over prices. *Health Affairs*, 36(1), 141-148. doi:10.1377/hlthaff.2016.0479

<sup>1</sup> Roberts, E. T., Chernew, M. E., & McWilliams, J. M. (2017). Market share matters: Evidence of insurer and provider bargaining over prices. *Health Affairs*, 36(1), 141-148. doi:10.1377/hlthaff.2016.0479

substantial market power to negotiate prices.<sup>2</sup> Therefore, while physician anesthesiologists have appropriate negotiating power to ensure private payer payments are adequate to cover actual cost of services, the negotiation power of private insurers ensures that commercial payments are no higher than the market will allow.

**Private Insurer Payments are Used to Offset Insufficient Medicare Payment Rates for Anesthesiologists**

Medicare payment for physician anesthesia services is too low. As a result, physician anesthesiologists rely on appropriate private payer rates and supplemental payments to offset shortfalls from Medicare payments. An analysis of revenue sources for anesthesia practices in California evaluated how payer mix impacts financial solvency for anesthesia practices. The study determined that as the number of patients and revenue from public payers increases, the likelihood of receiving direct hospital payments increases.<sup>3</sup> The results of this study confirm that as anesthesia providers provide more care to Medicare and Medicaid patients, they become more reliant on supplemental payments from private sources to offset the lower Medicare payment rates.

Even though this payment differential exists for all physician anesthesiologists and is much more severe compared to all other physician services, physician anesthesiologists have the lowest Medicare opt-out rates compared with all other physicians. Table 2 lists the top three specialties with the highest Medicare opt-out rates. Physician anesthesiologists represent less than 0.01% of the total number of physicians who chose to opt out of the Medicare program in 2020.<sup>4,5</sup>

Table 2. Top Three Specialties with Highest Medicare Opt-Out Rates and Anesthesiology Opt-Out Rate

Specialty	Percent of Total Opt-Out Physicians
Psychiatry	42%
Family Medicine	19%
Internal Medicine	12%
Anesthesiology	<0.01%

Source: Ochieng, N., Schwartz, K., Neuman, T. (2020). *How Many Physicians Have Opted-Out of the Medicare Program?* Kaiser Family Foundation. Centers for Medicare & Medicaid Services, Opt Out Affidavits, accessed April 16, 2020. <https://data.cms.gov/Medicare-Enrollment/Opt-Out-Affidavits/7yuw-754z>

Physician anesthesiologists are effectively prevented from opting out of Medicare. A great majority of anesthesiologists and anesthesia practices that have coverage contracts with hospitals provide care to all patients without regard to insurance – Medicare, Medicaid, commercial or uninsured. Opting out of the Medicare program is simply not an option for hospital-based specialties such as anesthesiology in the way it is for other specialties. Physician anesthesiologists are consulting physicians providing anesthesia care that makes it possible to do the

<sup>2</sup> Dafny, Leemore S. (2015). Evaluating the Impact of Health Insurance Industry Consolidation: Learning from Experience. *Commonwealth Fund, pub. 1845, Vol. 33.* [https://www.commonwealthfund.org/sites/default/files/documents/media\\_files\\_publications\\_issue\\_brief\\_2015\\_nov\\_1845\\_dafny\\_impact\\_hlt\\_ins\\_industry\\_consolidation\\_ib.pdf](https://www.commonwealthfund.org/sites/default/files/documents/media_files_publications_issue_brief_2015_nov_1845_dafny_impact_hlt_ins_industry_consolidation_ib.pdf)

<sup>3</sup> O’Connell, C., Dexter, F., Mauler, D. J., & Sun, E. C. (2019). Trends in Direct Hospital Payments to Anesthesia Groups. *Anesthesiology, Sep;131(3):534-542.* <https://pubmed.ncbi.nlm.nih.gov/31283739/>

<sup>4</sup> Ochieng, N., Schwartz, K., Neuman, T. (2020). *How Many Physicians Have Opted-Out of the Medicare Program?* Kaiser Family Foundation. <https://www.kff.org/medicare/issue-brief/how-many-physicians-have-opted-out-of-the-medicare-program/>

<sup>5</sup>Centers for Medicare & Medicaid Services, Opt Out Affidavits, accessed April 16, 2020. <https://data.cms.gov/Medicare-Enrollment/Opt-Out-Affidavits/7yuw-754z>

surgeries and procedures that other clinicians perform to treat disease and provide relief to patients. It is imperative to have physician anesthesiologists continue to serve Medicare patients so patients can receive the procedural care required for their medical needs – care that would be impossible without anesthesia.

In summary, physician anesthesiologists ensure Medicare patients have access to essential anesthetic care despite having the lowest Medicare payment rates among all physicians relative to market-driven commercial insurance.

ASA thanks Congress for its engagement to ensure Medicare beneficiaries retain access to critical anesthesia services. For questions or further discussion about the GAO report please reach out to Sharon Merrick, MS, CCS-P, ASA Director of Payment and Practice Management, at [s.merrick@asahq.org](mailto:s.merrick@asahq.org).

Sincerely,

A handwritten signature in black ink that reads "Beverly K. Philip MD". The signature is written in a cursive style with a large, stylized "B" and "P".

Beverly K. Philip, MD, FACA, FASA  
President

cc: Kate Nast Jones