

# Anti-Markup Rule

## Background/ACC Activities

---

### 1. How did this come up?

- Although the Medicare program already has—albeit more limited—Anti-Markup Rule in place, CMS included in its proposed CY 2008 MPFS an expansion of its applications to capture a broader number of physician arrangements that the agency believes are potentially subject to fraud and abuse through prohibited self-referrals.
- The Interim Final MPFS adopted the Anti-Markup expansion provisions, but added language to capture even more physician arrangements than those originally included in the proposed rule. There is considerable criticism in the provider community that CMS adopted these “final” Anti-Markup changes illegally, since the public was not given an opportunity to comment on the proposed changes as required under the Administrative Procedures Act.

### 2. What Position has the ACC Adopted on the Anti-Markup Rule?

- The ACC did not comment on the first version of the Anti-Markup Rule expansion in the proposed MPFS, since we believed it was difficult to credibly criticize CMS’ attempt to limit a billing practice that could be perceived as unsavory. Staff felt it would compromise the College’s credibility as an advocate against Fraud Waste and Abuse.
- With regard to the Anti-Markup Rule proposal included in the Interim Final MPFS, the College has significant reservations on not only the amendments to the rule as originally described in the proposed MPFS, but the failure by CMS to adhere to the APA process requiring public comment prior to the adoption of any final regulations by a federal rulemaking agency.

### 3. How is the ACC Responding to the Anti-Markup Rule?

- The ACC will develop written comments for submission to CMS expressing our concerns with the new Rule’s content, as well as the manner in which the Agency adopted this regulation.
- The College is working with other medical specialty societies to explore options for convincing CMS to delay the effective date of implementation of the Anti-Markup Rule as adopted in the Interim Final MPFS.
- The ACC signed on to a letter prepared by the MGMA requesting a delay in the effective date and expressing overall concerns with the Anti-Markup Rule as adopted in the Interim Final MPFS.
- The College will also consider other options to pursue on its own to press its concerns with CMS over the new Rule’s provisions.