The Society of Thoracic Surgeons

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December 18, 2015

Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1631-FC, P.O. Box 8013
Baltimore, MD 21244-8013.

Re: CMS-1631-FC - Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2016

Dear Mr. Slavitt:

On behalf of The Society of Thoracic Surgeons (STS), I write to provide comments on the Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2016 Final Rule that was published in the Federal Register on November 16, 2015.

Founded in 1964, STS is an international not-for-profit organization representing more than 7,000 cardiothoracic surgeons, researchers, and allied health care professionals in 90 countries who are dedicated to ensuring the best surgical care for patients with diseases of the heart, lungs, and other organs in the chest. The mission of the Society is to enhance the ability of cardiothoracic surgeons to provide the highest quality patient care through education, research, and advocacy.

H. Valuation of Specific Codes
(6) Mediastinoscopy with Biopsy (CPT Codes 39401 and 39402)

We wish to reiterate concerns related to the proposed value for 39402: Mediastinoscopy, with lymph node biopsy(ies) (most commonly undertaken as part of lung cancer staging). STS strongly disagrees with the decision by CMS to propose a work RVU of 7.25 for CPT code 39402. We believe the RUC-recommended valuation of 7.50 for code 39402 captures both the increased time and intensity of work involved and maintains the most accurate relativity between 39401 and 39402, which are the only 2 codes in this family.

In the final rule, CMS states, "we proposed to scale the work RVU of CPT code 39402 in accordance with the change in the intraservice times between CPT codes 39401 and 39402. We indicated that applying this ratio in the intraservice time to the work RVU of CPT code 39401 yielded a total work RVU of 7.25 for CPT code 39402."

CMS also notes that, "when comparing the work RVUs for CPT codes 39401

and 39402, the work RVU for CPT code 39402 was higher than would be expected based on the difference in time between these two procedures, even considering the more difficult clinical nature of CPT code 39402." STS continues to believe that the use of intraservice time ratios is a critical element in determining total RVU, but it is only part of the overall methodology which must also include an accounting for procedural intensity for the accurate valuation of CPT codes.

Sec. 1848. [42 U.S.C. 1395w–4] directs CMS as follows

(a) Payment Based on Fee Schedule.—

(C) Computation of relative value units for components.— For purposes of this section for each physicians' service—

(i) Work relative value units.—The Secretary shall determine a number of work relative value units for the service based on the relative resources incorporating physician time ***and intensity*** required in furnishing the service. (emphasis added)

In the final rule, CMS acknowledges the increased intensity of code 39402 in addition to the additional time required for code 39402 compared to 39401; however, CMS calculates their final value based on time only, ignoring the intensity difference. We believe that taking both the final proposed work RVU for 39401 (including the pre service time, intra service time, post service time, and office visits) and adding the incremental increase in work RVU's represented by the significant increase in both intensity and time (as mandated by Statute), leads to a final RUC recommended work RVU of 7.50. A further argument substantiating our rationale can be found in our comments to the Proposed Final Rule where we crosswalked code 39402 to code 32674, which mirrors the intensity of 39402.

Addendum B

We also wish to reiterate concerns discussed with CMS staff during a December 15th call. When reviewing Addendum B, we noted significant anomalies in 31 codes which we asked CMS to address in a technical correction. There are three separate subgroups in which these anomalies were noted, but we believe that these codes share the common feature that they have very small numbers of cases in the Medicare Claims Database.

The following codes are all codes which are used by pediatric heart surgeons to describe care for children with a variety of congenital heart defects (33310, 33335, 33506, 33572, 33619, 33660, 33690, 33726, 33750, 33755, 33764, 33766, 33768, 33780, 33786, 33800, 33802, 33803, and 33851). In examining these codes, we find that the physician work RVUs remain identical to those of the previous year as would be expected. However, a significant decline in Practice Expense RVUs for these codes occurred. We experienced a similar problem in the 2015 Medicare Fee Schedule when Malpractice RVUs for a significant number of congenital heart surgery codes, which are low volume codes and only provided by pediatric cardiac surgeons, were improperly adjusted. In this case, the malpractice RVU values for a cardiac surgeon were not used and the result was an approximately 70-75% reduction in the Malpractice RVUs for the affected codes. This anomaly was eventually corrected. For the 2016 Fee Schedule, we ask CMS to maintain the Practice Expense values from the 2015 Medicare Fee Schedule as unchanged in

the 2016 Medicare Fee Schedule.

There were also six thoracic surgery codes (32507, 32667, 38746, 32674, 32506, and 32668) that had significant declines in malpractice RVUs despite there being no changes in physician work RVUs. Our review of the AMA-RUC database indicates for each of these procedures the predominant provider is a cardiothoracic surgeon 88% of the time; therefore, we believe that the Malpractice Expense inputs appropriate for cardiothoracic surgery cases should be used. We have asked CMS to make a technical correction to these codes as well.

Finally, six other cardiothoracic surgery codes (32506, 32507, 32668, 32668, 32674, 38746) and three adult cardiac surgery codes (33523, 33530, 35600) also had unexplained significant declines in malpractice RVUs despite there being no changes in physician work RVUs. Additionally, one adult cardiac surgery code (33255) (for open, operative Maze procedure) also saw reductions in malpractice RVUs. We are concerned that the methodology for assigning these codes to the correct procedural specialty, in addition to misuse of these codes by some non-surgical, specialty physicians could explain these otherwise illogical reductions in the Malpractice RVUs for these codes. If the malpractice RVU profile for cardiac surgeons is "blended" with those of several non-surgical practitioners, an inappropriate decline in malpractice RVUs for these codes would, and as seems likely, has occurred. In particular, 33255 describes a procedure done through a thoracotomy or sternotomy incision, and we are highly doubtful that any physician other than a cardiothoracic surgeon would undertake such a procedure.

STS has provided CMS with a spreadsheet identifying the discrepancies that we have found, which we believe have arisen through an inadvertent methodological mistake. We request that CMS process a technical correction.

Thank you for considering our comments. Should you have any questions, please contact Courtney Yohe, Director of STS Government Relations (202-787-1222 or cyohe@sts.org).

Sincerely,

Mark S. Allen, MD
President