

August 21, 2020

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
Attention: CMS-1734-P
P.O. Box 8011
Baltimore, MD 21244-1850

Re: Policies for Office/Outpatient E/M Visits in the CY 2021 Medicare Physician Fee Schedule Proposed Rule

Dear Administrator Verma:

On behalf of the undersigned 26 organizations, we write to voice our strong opposition to certain policies related to evaluation and management (E/M) codes in the calendar year (CY) 2021 Medicare physician fee schedule (PFS) proposed rule. The Centers for Medicare & Medicaid Services (CMS) is proposing to reduce the Medicare conversion factor from \$36.0896 to \$32.2605, or by 10.6 percent. This decrease lowers the 2021 conversion factor below the 1994 conversion factor of \$32.9050, which would be approximately \$58.02 today in current dollars.^{1,2} This extraordinary cut to the conversion factor is triggered by a number of proposed increases to the values of many bundled services that are comparable to or include office/outpatient E/M visits. The additional spending to support these increases along with the increases to stand-alone office/outpatient E/M visits totals \$10.2 billion.

In addition, CMS' failure to incorporate the American Medical Association/Specialty Society Relative Value Scale Update Committee (RUC)-recommended work and time incremental increases for the revised office/outpatient visit E/M codes in the global codes is unacceptable, particularly in light of the adjustments proposed for other bundled services, such as the maternity codes. Organized medicine has been united in its recommendations that CMS incorporate the incremental revised office/outpatient E/M values in the global codes, as evidenced by the many comment letters and meetings over the past year. We are, therefore, deeply disappointed that CMS continues to ignore these recommendations in the CY 2021 Medicare PFS proposed rule.

The reduction of the conversion factor, paired with the failure to incorporate the revised office/outpatient E/M values in the global codes, will result in drastic cuts to many physician specialties. These cuts come at a time when specialists are struggling with the financial impact of the COVID-19 pandemic in many ways, including pay cuts from the suspension of elective surgery, salary reductions, furloughs, and layoffs.

¹ <https://www.ama-assn.org/system/files/2020-01/cf-history.pdf>

² https://www.bls.gov/data/inflation_calculator.htm. Using the U.S. Bureau of Labor Statistics inflation calculator, the conversion factor in 1994, \$32.9050, is worth approximately \$58.02 today. This means that the proposed CY 2021 cut of the conversion factor to \$32.2605 is an even steeper cut when adjusted for inflation and is by far the lowest conversion factor since its inception in 1992.

We reiterate that it is inappropriate for CMS to not apply the RUC-recommended changes to global codes starting in CY 2021. To do otherwise will:

- ***Disrupt the relativity in the fee schedule:*** Applying the RUC-recommended E/M value increases to stand-alone E/Ms, select global codes (e.g., monthly end-stage renal disease and bundled maternity care), and select bundled services (e.g., monthly psychiatric management), but not to the E/Ms that are included in the global surgical package will result in disrupting the relativity between codes across the Medicare PFS. Changing the values for some bundled services that include E/M services, but not for others, disrupts this relativity, which was mandated by Congress, established in 1992, and refined over the past 27 years.
- ***Create specialty differentials:*** Per the Medicare statute, CMS is prohibited from paying physicians differently for the same work, and the “Secretary may not vary the . . . number of relative value units for a physicians’ service based on whether the physician furnishing the service is a specialist or based on the type of specialty of the physician.”³ Failing to adjust the global codes is tantamount to paying some doctors less for providing the same E/M services, in violation of the law. In the CY 2021 PFS proposed rule, CMS points to the method of valuation (i.e. building block vs. magnitude estimation) for a rationale as to why some bundled services should be increased in value to reflect the revised office/outpatient E/M values, while global codes should not. However, this statutory prohibition on paying physicians differently for the same work applies regardless of code valuation method and the incremental increases should apply to all physicians.
- ***Inappropriately rely on section 523(a) of MACRA:*** In the CY 2021 PFS proposed rule, CMS refers to its decision in the CY 2020 PFS final rule to not make changes to the valuation of the 10- and 90-day global surgical packages to reflect the increased values for the office/outpatient E/M visit codes while the agency continues to collect data on the number and level of post-operative visits included in global codes as required by MACRA. The MACRA data collection requirement, set forth in section 523(a), does not prohibit CMS from applying the RUC-recommended incremental increases to the office/outpatient E/Ms codes to global codes. In fact, section 523(a) specifically authorizes CMS to adjust surgical services, notwithstanding the mandate to concomitantly undertake the MACRA-mandated global code data collection project. In addition, it is inappropriate for CMS to rely on the implementation of MACRA, which passed in 2015, as a reason to refrain from making necessary updates in 2021. This inaction punishes a subset of physicians who, like all healthcare practitioners, are experiencing the pressures of a global pandemic.
- ***Ignore recommendations endorsed by nearly all medical specialties:*** The RUC, which represents the entire medical profession, voted overwhelmingly (27-1) in 2019 to recommend that the full incremental increase of work and physician time for office visits be incorporated into the global periods for each CPT code with a global period of 10-day, 90-day, and MMM (maternity). The RUC also recommended that the practice expense

³ 42 U.S. Code §1395w-4(c)(6).

inputs should be modified for the office visits within the global periods. In the CY 2021 PFS proposed rule, CMS is using the RUC recommendation as part of the rationale for proposing to increase the values of the maternity services codes and select other bundled services, but not the global bundled codes.

Again, we strongly urge CMS to apply the RUC-recommended changes to the E/M component of the global codes to maintain the relativity of the fee schedule. Our organizations will submit more detailed comment letters prior to the comment deadline, but the gravity of this particular proposal warrants an immediate response.

Thank you for your consideration of these comments, and we welcome continued dialogue with CMS on this critical issue.

Sincerely,

American College of Surgeons

American Academy of Facial Plastic and Reconstructive Surgery

American Association of Neurological Surgeons

American Association of Orthopaedic Surgeons

American College of Mohs Surgery

American College of Osteopathic Surgeons

American Glaucoma Society

American Orthopaedic Foot & Ankle Society

American Pediatric Surgical Association

American Society for Metabolic and Bariatric Surgery

American Society for Surgery of the Hand

American Society of Breast Surgeons

American Society of Cataract and Refractive Surgery

American Society of Colon and Rectal Surgeons

American Society of Ophthalmic Plastic & Reconstructive Surgery

American Society of Plastic Surgeons

American Society of Retina Specialists

American Urogynecologic Society

American Academy of Ophthalmology

Congress of Neurological Surgeons

Heart Rhythm Society

Society for Vascular Surgery

Society of American Gastrointestinal and Endoscopic Surgeons

Society of Gynecologic Oncology

Society of Surgical Oncology

The Society of Thoracic Surgeons