

Congress of the United States
Washington, DC 20515

October 17, 2013

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Room 337H Humphrey Building
Washington, DC 20201

Dear Administrator Tavenner:

We write to urge CMS to withdraw its proposal in the Calendar Year (CY) 2014 Medicare Physician Fee Schedule (PFS) Proposed Rule. This rule would place a cap on non-facility (office-based) practice expense (PE) payment for 211 physician services at either hospital outpatient prospective payment system (OPPS) or ambulatory surgical center (ASC) rates because the agency believes these payments are potentially “misvalued”. The proposal will reduce payments for many services by 50 percent or more, potentially making them unavailable in physicians’ offices, thus denying patients access to services in a more convenient and less fragmented setting.

Under CMS’ proposal, services provided less than five percent of the time in the hospital outpatient setting are supposedly exempt from the cap. Many of these services, however, are being capped at the OPPS rate even though they are never or rarely performed in that setting. Many services being capped at the OPPS rate have their technical and professional components separated and may typically be performed in completely different sites of service. Capping the entire service without consideration of the efficiencies achieved through differing sites of service for the professional, technical, and global components is shortsighted. In addition, it is unclear why CMS chose to apply the ASC rate as a cap to many of the 211 listed codes, even if the services were provided less than five percent of the time in an ASC. In fact, only eight of the 112 codes that are being tied to the ASC payment rate are actually provided in an ASC at least five percent of the time.

We also believe the proposal’s underlying premise is flawed. CMS has ignored fundamental differences in Medicare methodologies between the statutorily-required, resource-based relative value scale (RBRVS) that is the basis for the PFS and the ambulatory payment classifications (APCs) used for OPPS and ASC rates. These differences render service-by-service comparisons inappropriate and inaccurate. APCs are a bundled payment system that average low and high margin hospital services within single APCs. In contrast, the RBRVS captures the relative resource used for each individual service. In addition, we believe this proposal violates a Medicare statutory requirement that PE Relative Value Units (RVUs) be resource-based for the particular practice setting. Finally, CMS is proposing to use the 2013 OPPS/ASC payment rates, which ignores corrections and adjustments by CMS for OPPS and ASC rates in 2014.

For the majority of the codes with proposed reductions, the direct expenses alone (clinical labor, supplies, and equipment) exceed the proposed payment cap. This will result in physicians' offices being unable to cover their direct costs to provide these services. Along with our concerns about limiting patient access to care, we are also concerned that support staff employed by office-based practices, which are small businesses, may have to be eliminated as a direct result of these proposed drastic PE cuts.

Based on the concerns outlined above, we urge CMS to withdraw this proposal prior to the publication of the CY 2014 Medicare PFS Final Rule in early November.

If you or your staff has any questions, please contact John Martin with Congressman Roe at (202) 225-6356 or john.martin@mail.house.gov.

Sincerely,

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