

September 2, 2022

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Medicare Program: CY 2023 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; CMS-1770-P

Dear Administrator Brooks-LaSure:

The American Association of Physicists in Medicine (AAPM)¹ is pleased to submit comments to the Centers for Medicare and Medicaid Services (CMS) in response to the July 29, 2022 *Federal Register* notice regarding the 2023 Medicare Physician Fee Schedule (MPFS) proposed rule.

The AAPM urges CMS to protect access to radiation oncology by mitigating payment cuts and ensuring that Medicare payments keep pace with inflation. We believe that underlying issues with MPFS methodology and staggered practice expense changes negatively impact access to high-value radiation oncology services. Part B Medicare expenditures for radiation oncology in 2020 are less than the three top chemotherapy drugs combined (i.e., Keytruda, Optivo and Rituxan). Major reforms are necessary to achieve payment stability to ensure accessible high quality cancer care.

Reductions to Radiation Oncology Payment & 2023 Conversion Factor

CMS is proposing significant payment reductions for radiation oncology services. The proposed 2023 Conversion Factor is \$33.08, a significant 4.4 percent decrease over the final 2022 Conversion Factor of \$34.61, which was adjusted due to the Protecting Medicare and American Farmers from Sequester Cuts Act provision that increased MPFS payment amounts for services furnished during calendar year (CY) 2022 by 3.0 percent. **The expiration of this legislative provision means the entire MPFS faces an immediate 3.0 percent payment reduction before taking into consideration the impact of the payment policies in the 2023 proposed rule.**

¹ The American Association of Physicists in Medicine (AAPM) is the premier organization in medical physics, a broadly-based scientific and professional discipline encompassing physics principles and applications in biology and medicine whose mission is to advance the science, education and professional practice of medical physics. Medical physicists contribute to the effectiveness of radiological imaging procedures by assuring radiation safety and helping to develop improved imaging techniques (e.g., mammography CT, MR, ultrasound). They contribute to development of therapeutic techniques (e.g., prostate implants, stereotactic radiosurgery), collaborate with radiation oncologists to design treatment plans, and monitor equipment and procedures to insure that cancer patients receive the prescribed dose of radiation to the correct location. Medical physicists are responsible for ensuring that imaging and treatment facilities meet the rules and regulations of the U.S. Nuclear Regulatory Commission (NRC) and various State regulatory agencies. AAPM represents over 9,000 medical physicists.

In combination with the expiration of the 3.0 percent conversion factor increase, **the proposed rule would reduce payments for radiation oncology services for 2023 by approximately 4.0 percent.**

We are very concerned regarding payment reductions proposed for 2023, especially as many providers continue to experience economic hardships related to the COVID-19 public health emergency (PHE). Payment cuts of this magnitude are unsustainable and fail to recognize that radiation oncology is a high-value form of cancer treatment.

The AAPM urges CMS to press Congress to act and provide a positive update to the Medicare Conversion Factor in 2023 and all future years.

Clinical Labor Pricing Update

CMS continues to update the clinical labor pricing for CY 2023, which is phased in over 4 years. Due to budget neutrality requirements, increasing the clinical labor pricing disproportionately impacts physicians and other providers with high-cost medical equipment and supplies, including radiation oncology. While we agree that updated clinical labor rates are necessary, the negative impact to a few specialties is not acceptable.

Phasing in the clinical labor update over a four-year period reduces the immediate severe negative impact on many specialties but it does not remedy the overall effect it has on practices. Specialty societies need to work with CMS on a more comprehensive solution to significant payment shifts that payment policy changes generate due to budget neutrality, so there is not an inappropriate and unfair burden on specialties that require specialized medical equipment and supplies to care for their patients.

The AAPM encourages CMS to regularly update clinical labor rates while continuing to explore options to make these updates more equitable.

Strategies for Updates to Practice Expense Data Collection and Methodology

The practice expense (PE) inputs used in setting MPFS rates, including both the development of practice expense RVUs and the allocation among work, practice expense, and malpractice RVUs are central in developing accurate rates and maintaining appropriate relativity among MPFS services.

CMS states its desire to continue to improve accuracy, predictability, and sustainability of updates to the practice expense valuation methodology to reduce the risks of possible misvaluation and other unintended outcomes. CMS continues to develop policies geared toward providing more consistent updates to the direct practice expense inputs used in MPFS rate setting, including medical supply/equipment pricing and clinical labor rates. CMS states that efforts to develop these policies should contribute to improved standardization and transparency for all PE inputs used to update the MPFS. As CMS continues their work to improve the information they use in the PE methodology, the Agency has issued a general comment solicitation to better understand how CMS might improve the collection of data inputs and refine the indirect practice expense methodology.

We urge CMS to take caution in undertaking any significant changes to the existing methodology used to determine practice expense relative values to avoid unintended consequences, including sizable shifts in payments within or between specialties that could create access to care issues. Adequate time should be given to considering not only an appropriate replacement for the existing methodology, but also to the ultimate implementation of any changes with input from stakeholders.

It is imperative that CMS consider the unique practice expense requirements associated with the delivery of radiation oncology. The practice of radiation oncology is dependent on specialized capital equipment for radiation treatment. Equipment purchase and maintenance costs vary by practice depending on the age of the equipment, the phase of the equipment's "life cycle," and the number of depreciation years for the equipment. Professionals with specific expertise and experience in the design and construction of radiation oncology clinics must be consulted to ensure that clinics meet National Council of Radiation Protection standards, federal and state regulations, as well as local requirements. The facilities containing linear accelerators and other radiation oncology equipment require specifically designed radiation shielding within the structure of the facility (walls, ceiling, floor), using reinforced concrete, lead and other materials, which requires a significant financial investment.

In addition, the cost of office space and related office equipment has risen significantly in recent years, as have administrative costs associated with federally mandated reporting requirements.

The AMA Physician Practice Information Survey (PPIS) is the most comprehensive source of practice expense survey information available. The survey was last conducted in 2007-2008 based on 2006 data. We acknowledge that the current AMA PPIS data is outdated. We understand that the AMA is actively engaged in collecting updated physicians' earnings and associated practice expense costs data beginning in 2023. CMS should not make changes to the indirect practice expense methodology or calculations until after the AMA collects and shares the data from their practice expense cost survey.

Establishing payments that better reflect current practice costs would mitigate possible unintended consequences. Medicare's practice expense formula should result in payments that appropriately reimburse physicians and their practices for expenses incurred. We must provide Medicare beneficiaries access to high quality cancer care and financial protections. We also must provide equity among physicians, recognizing the variation in practice expense by specialty.

The AAPM recommends that CMS not implement indirect practice expense changes to the MPFS until at least January 1, 2025, while the Agency meaningfully engages stakeholders on potential practice expense data and methodologic changes.

Rebasing and Revising the Medicare Economic Index

The Medicare Economic Index (MEI) is an index that measures changes in the market price of inputs used to furnish physician services. These inputs are grouped into cost categories and each cost category is assigned a weight (indicating the relative importance of that category) and a price proxy (or proxies) that CMS uses to measure changes in the price of the resources over time. The MEI also includes an adjustment to account for improvements in the productivity of practices over time.

CMS proposes to rebase and revise the MEI based on a methodology that uses publicly available data sources that are more reflective of current market conditions of physician ownership practices, rather than reflecting costs of self-employed physicians, and will allow the MEI to be updated on a more regular basis. In the 2023 proposed rule, CMS discusses a proposed policy to rebase and revise the MEI. The Agency is not proposing changes for 2023 related to this policy; however, it is seeking comments because such a proposal would result in significant redistribution.

We agree that the data currently used for the MEI is outdated. CMS proposes to update the MEI weights primarily using 2017 data from the U.S. Census Bureau's Services Annual Service (SAS), estimated selected expenses for NAICS 6211 Offices of Physicians, as well as other supplemental data. The SAS data was not designed with the purposes of updating the MEI and does not capture the types of costs specific to the MPFS. We are concerned that the SAS data is not sufficiently detailed and lacks specificity related to how physicians are compensated and lacks necessary detail to exclude separately billable supplies and drugs.

While we support rebasing and revising the MEI and considering new policies to improve the MPFS, the proposed MEI policy is concerning. The CMS proposed changes include utilizing more recent data from a new source that significantly changes RVU category weights. This proposal will result in significant specialty redistribution and geographic redistributions. The proposal includes significant decreases in professional liability payments, which seem unrealistic given the trends in the malpractice premium data.

Overall, the AAPM favors an approach that uses survey data collected for the specific purpose of collecting practice expense data by specialty and can be aggregated into physician work, practice expense, and professional liability components for purposes of updating the cost share weights needed for the MEI. These same data can then also be used to update the practice expense component of the GPCI, as appropriate.

The AAPM supports the CMS delay in rebasing and revising the Medicare Economic Index for calendar year 2023 and future years until better practice cost data is available.

Strategies for Improving Global Surgical Package Valuation

In the 2023 proposed rule, CMS states concerns about the accuracy and validity of the valuation of global packages, especially as it relates to evaluation and management (E/M) office visits included in the services. Currently, there are over 4,000 physicians' services paid as global packages. Global packages generally include the surgical procedure and any services typically provided during the pre- and postoperative periods (including evaluation and management (E/M) services and hospital discharge services). CMS is seeking public comment on strategies to improve the accuracy of payment for the global surgical packages under the MPFS.

The increased 2021 valuation of the office E/M visits should be incorporated in the surgical global packages. We disagree with the CMS decision to not apply the office E/M visit increases to the visits bundled into global surgery payment. The increases in the hospital visits and discharge day management services should be applied to the surgical global period, which CMS has done previously.

The AAPM recommends that CMS apply the office evaluation and management (E/M) visit 2021 reimbursement increases to the office visits included in surgical global payment.

The AAPM believes that if CMS has concerns regarding the accuracy of surgical services with global periods, they should nominate specific surgical codes as “potentially misvalued” and have these services re-valued by the AMA RUC.

Updating Malpractice RVUs

CMS proposes to update the malpractice RVUs beginning in 2023 by using more recent malpractice premium data and methodological refinements.

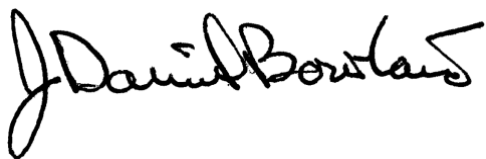
Specifically, CMS is proposing to utilize a true malpractice (MP) risk index as opposed to derived risk factors when calculating MP RVUs. Historically, CMS had used risk factors, which is a ratio of a specialty's national average premium to a single specialty's national average premium. The proposed risk index would be calculated as a ratio of the specialty's national average premium to the volume-weighted national average premium across all specialties. CMS states that the change to a risk index does not change the actual malpractice RVUs.

According to our analysis, this proposed change may have contributed to a technical error impacting all CPT and HCPCS codes with a Professional Component (PC) and Technical Component (TC) split. Historically, the majority of malpractice RVUs have been allocated to the professional component. The proposed malpractice RVUs show a pattern of significant decreases for the professional component and significant increases for the technical component of the majority of radiation therapy procedures.

The AAPM requests that CMS identify and correct the technical error before finalizing the malpractice RVUs effective January 1, 2023. If CMS is not able to resolve the error, the AAPM recommends that CMS delay implementation of the malpractice RVU update and apply the current methodology for all CPT and HCPCS codes with a Professional Component (PC) and Technical Component (TC) split until the error is corrected.

Appropriate payment for medical physics services, radiology and radiation oncology procedures is necessary to ensure that Medicare beneficiaries continue to have full access to diagnostic imaging and high-quality radiation therapy cancer treatments. We thank you for this opportunity to submit our comments and request that CMS carefully consider these issues for the 2023 Medicare Physician Fee Schedule final rule. Should CMS staff have additional questions, please contact Wendy Smith Fuss, MPH at (904) 844-2503.

Sincerely,



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