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CY 2012 Physician Fee Schedule Final Rule Released

On July 19, CMS published the Final Rule for the CY 2012 Physician Fee Schedule (PFS) in the Federal Register.

In the Final Rule, the overall impacts to radiation oncology are due to (1) the third year of the four-year transition to the utilization of new Physician Practice Information Survey (PPIS) data; (2) rebasing of the Medicare Economic Index (MEI); and (3) changes between the Proposed and Final Rule that resulted in a net decrease of 2% in radiation oncology payments.

- *Third Year of the PPIS Survey*. In the CY 2010 Physician Fee Schedule Final Rule, CMS recognized arguments regarding the distinction between radiation therapy and diagnostic imaging and, consequently, reversed its application of the equipment utilization policy to radiation therapy equipment. In addition, while CMS finalized its proposal to use PPIS data, CMS finalized a four-year transition to the use of the new PPIS data (75/25 for CY 2010, 50/50 for CY 2011, 25/75 for CY 2012, and 0/100 for CY 2013) because of the magnitude of payment reductions for certain specialties. However, there is ongoing concern that the continued application of blended PE/HR values used in the PPIS data is not reflective of practice expense costs incurred at freestanding radiation therapy centers. **CMS notes in the CY 2012 Final Rule that it is transitioning an additional 25 percent of PPIS data into the PERVU methodology.**
- *Rebasing of the Medicare Economic Index*. In the CY 2011 Physician Fee Schedule Final Rule, CMS finalized its proposal to rebase the MEI to reflect appropriate physicians' expenses.[1] CMS noted in that rule that specialties with a high proportion of total RVUs attributable to PE, such as radiation oncology, were estimated to experience an increase in aggregate payments. While MEI rebasing masked the otherwise negative impacts to "radiation oncology" and "radiation therapy centers" in 2011 from the PPIS policy, the negative effects of the PPIS policy continue through 2013.

[1] The MEI measures annual price changes in the cost of physicians' time and operating expenses (i.e. inflation). The MEI has been rebased several times since 1975. In the CY 2011 PFS Final Rule, CMS finalized its proposal to rebase the MEI to reflect appropriate physicians' expenses in 2006.

- *AMA RUC Recommendations*. Several radiation oncology codes had their direct practice cost inputs affected by an "October 8, CPT 12"AMA RUC meeting, including the following:
    - **77418, Radiation tx delivery IMRT.** As a result of CMS's acceptance of the AMA RUC's recommendations, CMS removed a number of direct practice cost inputs for 77418 in the labor, supplies and equipment categories. For example, between the Proposed and Final Rules, CMS removed 7 of the 10 equipment direct practice cost inputs for 77418, including the "computer system, record and verify" input with a price of $163,593.
    - **77421, Stereoscopic x-ray guidance.** As a result of CMS's acceptance of the AMA RUC's recommendations, CMS reduced "Non-facility time" from 34 minutes to 24 minutes for the "portal imaging system (w-PC work station and software)" equipment direct practice cost input.
    - **76950, Echo guidance radiotherapy.** As a result of CMS's acceptance of the AMA RUC's recommendations, CMS removed a number of equipment and supply direct practice cost inputs for 76590.
    - **77435, Sbrt management.** In the case of 77435, the majority of the impact between the Proposed and Final Rule to 77435 is due to CMS's acceptance of an AMA RUC recommendation to reduce work RVUs for 77435 from 13.00 to 11.87. Because work RVUs are an input into the PE methodology, there also were corresponding, smaller reductions in this code's PERVUs.
    - **77014, Ct scan for therapy guide.** In the case of 77014, the AMA RUC recommended a reduction of "Non-facility time" from 26 minutes to 18 minutes for the "room, CT" equipment direct practice cost input. CMS further "refined" the "Non-facility time" to 14 minutes.

Radiation Oncology Code Reductions are "Interim" Final and May Be Commented Upon

It is important to note that all of the above radiation oncology codes are listed as "interim" final and, therefore, may receive comment. CMS has allowed for a 60 day comment period on certain "comment subject areas," which include interim final PERVUs and direct PE inputs. If there is a technical error relating to these codes, it is possible that CMS could release a corrections notice that would be effective for CY 2012. If there is not a technical issue (i.e. any arguments are related to policy), then the interim values probably would remain as they are for 2012 at least. However, CMS could accept policy arguments made during the 60-day comment period and revise the codes for the 2013 NPRM cycle. To be assured consideration, comments must be received by CMS no later than January 3, 2012.

Preliminary Impact Analysis

The Proposed and Final Rule impact tables show CY 2012 and CY 2013 impacts from the third and fourth year phase-ins of the four-year transition to the use of PPIS data as represented in the table below.

	Proposed		Final	
Specialty	**CY 2012**	**CY 2013**	**CY 2012**	**CY 2013**
Radiation Oncology	- 4%	- 8%	- 6%	-10%
Radiation Therapy Centers	- 5%	- 9%	- 6%	- 11%

CY 2012 Conversion Factor

In the CY 2011 Physician Fee Schedule Final Rule, CMS noted Section 1848(c)(2)(B)(ii)(II) of the Social Security Act required that the increases made to PE values as a result of the MEI rebasing be accomplished on a budget neutral basis. Rather than make corresponding reductions to work RVUs, however, CMS finalized its proposal to apply a budget neutrality adjustment of 0.9181 to the conversion factor (CF). Largely as a result of this policy, the CY 2011 PFS CF was reduced to $33.9764.

Although CMS makes certain budget neutrality adjustments to the CY 2012 final CF, the adjustments are minor: the adjustments would raise the CY 2012 CF from $33.9764 to $34.0376, assuming Congress freezes the CY 2012 CF.

Radiation Oncology Codes Subject to Future AMA RUC Review

As part of its effort to continue to identify, review and adjust "potentially misvalued codes," CMS requested in the Final Rule that the AMA RUC review the following codes:

- 77421 (Stereoscopic X-Ray Guidance)
- 77301 (Radiotherapy Dose Plan, IMRT)
- 77014 (Ct Scan for Therapy Guide)

These codes were identified by CMS along with over 70 other codes because they (1) have not been reviewed for at least 6 years, (2) represent high Medicare expenditures under the PFS, and (3) have a significant impact on PFS payment on a specialty level. CMS requests that the AMA RUC review at least half of these codes (including the aforementioned radiation oncology codes) by July 2012 in order for CMS to include any revised valuations for these codes in the CY 2013 PFS final rule with comment period.

"Supercommittee" Fails to Report; Sets up "Doc Fix" Bill in December

On November 21, the Joint Select Committee on Deficit Reduction (JSC) released a statement indicating the committee would be unable to reach agreement before the November 23 deadline established under the Budget Control Act. Although there had been some discussion of fixing the so-called Medicare physician "SGR" formula as part of any JSC agreement, the failure of the committee clears the way for a more narrow, and perhaps more limited, SGR fix in December. Under the SGR formula, physicians face a 27.4% cut under Medicare scheduled to begin on January 1, 2012. The Congressional Budget Office's most recent estimate of the cost to stave off those cuts for a year is $21 billion over 10 years.

Supreme Court Will Hear Health Care Challenge

On November 14, 2011, the United State Supreme Court announced it would consider legal challenges to the 2010 Patient Protection and Affordable Care Act (ACA). The court allotted five and a half hours to hear oral arguments on the constitutional question and related issues. The court stated it would hear arguments in March of 2012 on the constitutionality of the law's individual mandate, which requires that most Americans have at least a basic form of health insurance by 2014. The court will also consider whether:

- the rest of the health care law can stand if the individual mandate is ruled unconstitutional;
- Congress is unconstitutionally forcing states to expand Medicaid; and
- the issue is ripe for deciding.

CMS National Provider Call: ACO Application Process

On November 15, CMS held a National Provider Call to present information regarding the Shared Savings Program Application Process. The Shared Savings Program is a voluntary program that allows eligible providers, hospitals, and suppliers to create and/or participate in an Accountable Care Organization (ACO).

Those wishing to create and/or participate in an ACO must first fill out a Notice of Intent (NOI) to Apply form (a related memo is available here). NOI's are being accepted until January 6, 2012 for an April 1, 2012 start date and until February 17, 2012 for a July 1, 2012 start date. Filling out an NOI does not require the submission of an application but the application cannot be completed without first receiving an ACO ID through the NOI process. Applicants planning to file electronically also will need to apply for a CMS User ID. Step-by-step instructions on filling out the CMS User ID application can be found here.

Upon receipt of the ACO ID (and CMS User ID if filing electronically), applicants can complete the Medicare Shared Savings Program Application. CMS officials stressed the use of Appendix D of the "Medicare Shared Savings Program Application and accompanying appendices" (available here) when filling out the application. Once an application has been reviewed, applicants will receive an approval or denial letter via e-mail. If an application is denied, applicants may request a CMS reconsideration review within 15 days of receiving a denial letter.

House Members Oppose MedPAC's SGR Proposal

Previous Radiation Oncology newsletters reported on a MedPAC proposal to (1) freeze in current payment levels for primary care and (2) reduce annual payments for all other services by 5.9 percent for three years, followed by a freeze. On November 16, 94 House members sent a letter to Speaker John Boehner, Majority Leader Eric Cantor, Minority Leader Nancy Pelosi and Minority Whip Steny Hoyer to express opposition to the MedPAC proposal. In the letter, lawmakers agreed with the need to fix the SGR, but described the MedPAC proposal as "a step in the wrong direction."

Lawmakers Oppose Prostate Screening Draft Recommendation

On November 7, a bipartisan group of 44 House members sent a letter to HHS Secretary Kathleen Sebelius regarding the United States Preventive Task Force's recommendation against using the PSA test as a screening for prostate cancer. In the letter, lawmakers stated, "Until a more effective tool for detection of prostate cancer is developed, the P.S.A. test is among the best we have." Lawmakers urged Secretary Sebelius to maintain current coverage of the test by Medicare.

AHRQ Opens Prostate Cancer Evidence Review for Comment

On November 22 the Agency for Healthcare Research and Quality (AHRQ) announced that the following draft report is available and open for comment until December 20, 2011:

- Use of Multi-Gene Panels Involving Single Nucleotide Polymorphisms (SNPs) for Prostate Cancer Risk Assessment.

To view and comment on this draft research report, please click here.

Stage 2 Meaningful Use Compliance Date Pushed Back

On November 30, HHS Secretary Kathleen Sebelius announced an intended change to the Medicare EHR Incentive Program. Eligible doctors and hospitals that participate in the EHR Incentive Program this year currently have until 2013 to meet the requirements of Stage 2 standards. However, if those same providers did not participate in the program until 2012, they could wait until 2014 to meet these new Stage 2 standards and still be eligible for the same incentive payments. Consequently, Secretary Sebelius announced that HHS intends to allow doctors and hospitals participating in the EHR Incentive Program this year to wait to meet State 2 standards until 2014.

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