Misvalued Physician Services

Summary: Directs the Secretary to regularly review fee schedule rates for physician services paid for by Medicare, including services that have experienced high growth rates. Strengthens the Secretary’s authority to adjust fees schedule rates that are found to be misvalued or inaccurate.

Status update: On July 1, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule that would update payment policies and rates for physicians and nonphysician practitioners (NPPs) for services paid under the Medicare Physician Fee Schedule (MPFS) in calendar year (CY) 2012. As part of that proposed rule, CMS outlined new criteria with respect to misvalued physician services.

Next steps:
- June 25, 2010 – CMS issues regulations regarding the misvalued physician services.
- August 24, 2010 – Comments due to the CMS regarding the proposed rule.
- Not later than November 1, 2010 – CMS will respond to comments.
- January 1, 2011 – New payment rates and policies will apply as outlined in the proposed rule for June 25, 2010.
- July 1, 2011 – CMS issued proposed rule.
- August 30, 2011 – Comments due on proposed rule.
- November 1, 2011 – CMS final rule.
- January 1, 2012 – Changes for calendar year 2012 go into effect.

Additional information:
Long summary:

Sec. 3134. Mis-valued codes under the physician fee schedule.
Requires the Secretary periodically identify potentially misvalued codes and to review and make appropriate adjustments in their assigned relative. Specifically, the Secretary shall examine codes (and families of codes as appropriate) for which there has been the fastest growth; codes (and families of codes as appropriate) that have experienced substantial changes in practice expenses; codes for new technologies or services within an appropriate period (such as 3 years) after the relative values are initially established for such codes; multiple codes that are frequently billed in conjunction with furnishing a single service; codes with low relative values, particularly those that are often billed multiple times for a single treatment; codes which have not been subject to review since the implementation of the RBRVS (the so-called ‘Harvard-valued codes’); and such other codes determined to be appropriate by the Secretary. The Secretary may use existing processes for the review and validation, and the Secretary may conduct surveys and other data collection, employ analytic contractors, and use existing processes and other means to receive recommendations.

Requires the Secretary to establish a process to validate relative value units, including a sampling of codes meeting the specified criteria for being potentially misvalued. Such review may include work elements (such as time, mental effort and professional judgment, technical skill and physical effort, and stress due to risk) and may include the pre, post and intra-service components of work. Adjustments made pursuant to these reviews must be budget neutral and may be implemented by program instruction.

Waives the Federal Advisory Committee Act (FACA) and the Federal Acquisition Regulation (FAR) (except for provisions related to confidentiality) for this section. Repeals section 4505(d) of the Balanced Budget Act of 1997 pertaining to requirements for developing practice expense relative value units and repeals SSA section 1868(a) pertaining to potentially overvalued codes.

Summary of the Regulations:
In the 2012 proposed rule, CMS is significantly expanding the potentially misvalued code initiative, an effort to ensure Medicare is paying accurately for physician services and more closely managing the payment system. This year, CMS is focusing on the highest volume and dollar codes billed by physicians to determine whether these codes are overvalued and if evaluation and management codes are undervalued. In the past, CMS has targeted specific codes for review that may have affected a few procedural specialties like cardiology, radiology or nuclear medicine but not taken a look at the highest expenditure codes across all specialties.

Legislative text:
SEC. 3134. MISVALUED CODES UNDER THE PHYSICIAN FEE SCHEDULE.
(a) IN GENERAL.—Section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)) is amended by adding at the end the following new subparagraphs:

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“(K) POTENTIALLY MISVALUED CODES.—
“(I) IN GENERAL.—The Secretary shall—
“(I) periodically identify services as being potentially misvalued using criteria specified in clause (ii); and
“(II) review and make appropriate adjustments to the relative values established under this paragraph for services identified as being potentially misvalued under subclause (I).
“(II) IDENTIFICATION OF POTENTIALLY MISVALUED CODES.—For purposes of identifying potentially misvalued services pursuant to clause (I)(II), the Secretary shall examine (as the Secretary determines to be appropriate) codes (and families of codes as appropriate) for which there has been the fastest growth; codes (and families of codes as appropriate) that have experienced substantial changes in practice expenses; codes for new technologies or services within an appropriate period (such as 3 years) after the relative values are initially established for such codes; multiple codes that are frequently billed in conjunction with furnishing a single service; codes with low relative values, particularly those that are often billed multiple times for a single treatment; codes which have not been subject to review since the implementation of the RBRVS (the so-called ‘Harvard-valued codes’); and such other codes determined to be appropriate by the Secretary.
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“(iii) REVIEW AND ADJUSTMENTS.—

“(i) The Secretary may use existing processes to receive recommendations on the review and appropriate adjustment of potentially misvalued services described in clause (i)(ii).

“(ii) The Secretary may conduct surveys, other data collection activities, studies, or other analyses as the Secretary determines to be appropriate to facilitate the review and appropriate adjustment described in clause (i)(ii).

“(iii) The Secretary may use analytic contractors to identify and analyze services identified under clause (i)(i), conduct surveys or collect data, and make recommendations on the review and appropriate adjustment of services described in clause (i)(ii).

“(iv) The Secretary may coordinate the review and appropriate adjustment described in clause (i)(ii) with the periodic review described in subparagraph (B).

“(v) As part of the review and adjustment described in clause (i)(iii), including with respect to codes with low relative values described in clause (ii), the Secretary may make appropriate coding revisions (including using existing processes for consideration of coding changes) which may include consolidation of individual services into bundled codes for payment under the fee schedule under subsection (b).

“(vi) The provisions of subparagraph (B)(ii)(iii) shall apply to adjustments to relative value units made pursuant to this subparagraph in the same manner as such provisions apply to adjustments under subparagraph (B)(ii)(ii).

“(v) VALIDATING RELATIVE VALUE UNITS.—

“(i) IN GENERAL.—The Secretary shall establish a process to validate relative value units under the fee schedule under subsection (b).

“(ii) COMPONENTS AND ELEMENTS OF WORK.—The process described in clause (i) may include validation of work elements (such as time, mental effort and professional judgment, technical skill and physical effort, and stress due to risk) involved with furnishing a service and may include validation of the pre-, post-, and intra-service components of work.

“(iii) SCOPE OF CODES.—The validation of work relative value units shall include a sampling of codes for services that is the same as the codes listed under subparagraph (K)(i).

“(iv) METHODS.—The Secretary may conduct the validation under this subparagraph using methods described in subclauses (i) through (V) of subparagraph (K)(iii) as the Secretary determines to be appropriate.

“(v) ADJUSTMENTS.—The Secretary shall make appropriate adjustments to the work relative value units under the fee schedule under subsection (b). The provisions of subparagraph (B)(ii)(ii) shall apply to adjustments to relative value units made pursuant to this subparagraph in the same manner as such provisions apply to adjustments under subparagraph (B)(ii)(ii).”.

(b) IMPLEMENTATION.—

(1) ADMINISTRATION.—

(A) Chapter 35 of title 44, United States Code and the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to this section or the amendment made by this section.

(B) Notwithstanding any other provision of law, the Secretary may implement subparagraphs (K) and (L) of 1848(c)(2) of the Social Security Act, as added by subsection (a), by program instruction or otherwise.

(C) Section 4505(d) of the Balanced Budget Act of 1997 is repealed.

(D) Except for provisions related to confidentiality of information, the provisions of the Federal Acquisition Regulation shall not apply to this section or the amendment made by this section.

(2) FOCUSING CMS RESOURCES ON POTENTIALLY OVERVALUED CODES.—Section 1868(a) of the Social Security Act (42 U.S.C. 1395ee(a)) is repealed.