

## SHUFFLING THE DECK: UPDATES IN THE CY 2021 MEDICARE PHYSICIAN FEE SCHEDULE

September 24, 2020

On August 4, 2020, CMS published its [CY 2021 Medicare Physician Fee Schedule Proposed Rule](#) (the “Rule”) in the Federal Register. The Rule includes a number of significant updates impacting reimbursement under the Medicare Physician Fee Schedule (“MPFS”). These updates follow CMS’s [announcement last year](#) of an increase of RVUs for office/outpatient evaluation and management (“E&M”) codes. In order to ensure the associated cost of these E&M code updates would be offset to maintain budget neutrality, the Rule proposes an update to the Medicare Conversion Factor from \$36.09 to \$32.26 (a drop of more than 10%), as well as sweeping updates to RVUs across a variety of physician specialties. A finalized version of the Rule, taking into account constituent comments, is expected to be published by CMS on or before December 2, 2020, with an effective date for proposed changes of January 1, 2021. Providers/organizations which compensate or are reimbursed for physician services in a manner that references the MPFS may be impacted.

### BUSINESS/COMPLIANCE IMPLICATIONS OF THE CY 2021 MPFS RULE

The Rule implicates a number of considerations with respect to business planning and compliance among physicians, physician groups, hospitals, other provider entities, and insurance carriers which provide MPFS-based reimbursement. These include:

#### Reimbursement and Business Planning

Based on the updates to the Medicare Conversion Factor and RVUs across several physician specialties under the Rule, significant changes in reimbursement are expected to result in several specialty areas. Noteworthy examples include anticipated gains in reimbursement of 1% for Cardiology, 13% for Family Practice, 14% for Hematology/Oncology, and 7% for Interventional Pain Management. These gains are complimented by anticipated losses in other significant specialty areas, such as Gastroenterology and Orthopedic Surgery, for which losses of 5% [have been projected](#). These respective gains and losses by specialty have enormous implications for business planning as healthcare entities which engage physicians to provide services, such as hospitals, may need to re-forecast their agreement pro-formas and expected revenue, budgets, and business plans, in response to anticipated changes in reimbursement. To the extent compensation paid to physicians, whether on a per-service or wRVU basis, is also tied to the MPFS, providers engaging physicians as independent contractors or employees may need to re-evaluate their expected overhead compensation costs.

## Stark/Anti-Kickback Compliance

Beyond business planning, the Rule may have significant implications with respect to provider compliance under Stark and Anti-Kickback regulations, particularly with respect to physician/group service and employment agreements which provide compensation on a per-wRVU basis (e.g., with reference to a contractual conversion factor). Under such arrangements, a physician providing the same level of services may earn significantly greater or lesser wRVUs, opening up the possibility for an increase or decrease of potential compensation for the same work. Adding to that the fact that these services may in turn experience significant variations with respect to reimbursement (the “return on investment” for the entity providing compensation), the fair market value and commercial reasonableness of such compensation may be called into question, as could the ongoing accuracy of any expert analyses opining on such fair market value/commercial reasonableness.

## POTENTIAL OPTIONS

Parties affected by the Rule may consider a number of potential options to prepare for the upcoming changes on January 1, 2021. These include:

1. Re-forecasting applicable pro-formas and business plans which ARE based on expected revenue that may be impacted by the change. This may involve accounting for anticipated changes both to reimbursement and to overhead expenses for MPFS-based compensation.
2. Re-examining fair market value and commercial reasonableness analyses, and amending applicable physician/provider services and employment agreements to ensure continued Stark/Anti-Kickback compliance after January 1, 2021. This may include “rebasings” wRVU calculations.
3. Considering alternate compensation models which are not tied to the MPFS (e.g., value-based quality metrics and gainsharing).

If you have any questions or need further guidance regarding the upcoming MPFS change, please contact a member of Hancock Daniel's [Physician Services](#) team.

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