

September 25, 2020

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1734-P
P.O. Box 8016
Baltimore, MD 21244-8016

To Whom It May Concern:

Thank you for the opportunity to provide comments to the Centers for Medicare and Medicaid Services (CMS) regarding the 2021 Physician Fee Schedule proposed rule, as published in the Federal Register on August 17, 2020. The proposed rule would, among other things, reduce the relative value units (RVUs) and the corresponding conversion factor for spinal manipulation, the only chiropractic physician service covered by Medicare, resulting in drastic cuts to the Physician Fee Schedule (PFS) for this service.

The Florida Chiropractic Association represents 4,500 chiropractic physician members and has grave concerns regarding the disparate and crippling impact the proposed rule would have on Medicare patients. We strongly oppose CMS' significant payment reductions for chiropractic services found in the 2021 proposed physician fee schedule. The combined impact of reductions to the work RVU (-7%) and the practice expense RVU (-3%) for chiropractors will mean a total decrease of 10%. The reduced RVUs, combined with the reduced conversion factor, result in an actual payment decrease of more than 19%. If implemented as proposed, these drastic reductions will negatively affect the ability of Medicare beneficiaries across the nation to access needed services.

Restricting beneficiaries' access to conservative, low-cost, drug- and surgery-free chiropractic care in the Medicare system will force beneficiaries to utilize higher cost (and higher risk) procedures. With more than 60 million Americans enrolled in Medicare in 2019, and some estimates predicting that up to 79 million seniors will be enrolled by 2030, these reductions must be stopped.

As the COVID-19 pandemic unfolded earlier this year, the U.S. Cybersecurity and Infrastructure Security Agency (CISA), classified chiropractors as part of the "essential critical infrastructure workforce" in health care. Chiropractors possess the training, broad diagnostic skills, and other competencies to help lessen the impact of the COVID-19 pandemic by addressing the non-COVID-19 neuromusculoskeletal complaints that would cause patients to seek care in emergency rooms, urgent care facilities, or primary care physician offices at a time when these facilities are already overburdened. As our nation continues to respond to COVID-19, essential services provided by chiropractors will continue to play a vital role, a role that will be significantly impacted if the proposed changes to the physician fee schedule are realized.

The Florida Chiropractic Association understands that the impetus for the proposed rule was to re-evaluate, and in many cases increase, RVUs for Current Procedural Terminology® (CPT) Evaluation/Management (E/M) codes associated with outpatient office visits, to more accurately reflect the resources involved in furnishing those services. We also understand that CMS is required to maintain budget neutrality to pay for any proposed increases, and, accordingly, they reduced the conversion factor for several services. However, even with the reduction in the conversion factor, providers such as medical and osteopathic physicians who are paid for E/M codes will still see increases in reimbursement amounts due to increases in RVUs for those codes. Chiropractic physicians will not.

Our overriding concern is that, while the rule intends to accurately reflect the value of resources expended by Medicare providers, the impact to chiropractors and their patients has the exact opposite effect for many reasons. CMS proposes to reduce both the RVUs and the conversion factor for spinal manipulation codes, the only codes Medicare reimburses for chiropractors. This limited coverage already places our doctors at a disadvantage when compared to far more extensive coverage for services provided by other practitioners. Because chiropractors are not paid by Medicare for E/M codes, under the proposed rule they suffer a double decrease with no opportunity to offset these reductions with increases in the E/M code values. The reduced RVUs combined with the reduced conversion factor results in an actual payment decrease of over 19%, a crippling decrease that most providers can hardly absorb under normal circumstances, much less during the current pandemic-related economic downturn.

Moreover, under the CPT and CMS guidelines, elements of E/M codes are considered to be included within the spinal manipulation service. In fact, chiropractors must perform pre- and post-manipulation services that mirror elements of E/M services. The proposed new rule wholly ignores that E/M services are included in the spinal manipulation codes and that they are required for reimbursement of these codes. The decrease in RVUs for 9894x codes, despite the code's inclusion of E/M elements, patently contradicts the stated purpose of the rule to accurately value E/M services. As unique users of spinal manipulation codes 9894x, chiropractors will thus undergo drastic, unjustifiable reimbursement decreases, while other practitioners who are separately reimbursed for E/M codes will experience increases.

As stated above, the proposed fee schedule will result in a 7% reduction in the RVU work component and a 3% reduction in the practice expense component. The reduction in the work component, which includes E/M elements, does not comport with the rule's purpose, as evidenced by the increases made to RVU work components for stand-alone E/M codes. Additionally, the 3% reduction in the practice expense component does not take into account that chiropractors, who generally practice in solo or small practices, must shoulder a far greater burden in practice expenses. Because most doctors work in small, independent offices, they do not enjoy the economies of scale that help to absorb costs in many other types of practices, such as medical doctor groups. Unable to keep their practices sustainable, the proposed rule will cause many doctors to have no choice but to cease treating Medicare patients. Also, because chiropractors cannot "opt out" of Medicare, they will have to refuse Medicare patients, a population that needs cost-effective, conservative care for chronic pain.

A 2019 analysis published September 27, 2019, in *Pain Medicine*, “Association Between Chiropractic Use and Opioid Receipt Among Patients with Spinal Pain: A Systematic Review and Meta-Analysis,” reviewed clinical studies of patients with noncancer pain who received chiropractic care and those that did not. The research found that those receiving care had 64% lower likelihood of receiving an opioid prescription. Several other recent studies have shown that the average per-person charges for clinical services for low back pain and prescription opioids were significantly lower for recipients of chiropractic services.

Another key study published in the journal *Spine*, “Early Predictors of Lumbar Spine Surgery after Occupational Back Injury: Results from a Prospective Study of Workers in Washington State,” showed that 42.7% of workers who first saw a surgeon had surgery, in contrast to only 1.5% of those who saw a chiropractor.

Reducing access to low-cost, conservative chiropractic care will add costs to the Medicare system, defeating the purpose of the reductions to chiropractic care found in the proposed 2021 physician fee schedule. A drastic reduction in payments for chiropractic services affects more than just Medicare beneficiaries and Medicare payments – many commercial payers, Medicaid plans, and other programs across the nation base their fee schedules on Medicare’s RVU calculations, either directly or indirectly. Therefore, these cuts will have a direct effect on fees paid by other public and private insurers throughout the health care system, further limiting access among the nation’s seniors to chiropractic care.

In conclusion, the Florida Chiropractic Association strongly urges HHS to reverse the decreases to both the work and professional expense components of the RVUs for CPT codes 98940, 98941, and 98942. We further urge HHS to increase the RVUs for spinal manipulation to reflect the E/M elements of that service, to carry out the stated purpose of the rule and to provide parity with the proposed increases for E/M services that are covered when rendered by other providers.

Sincerely,



Brian Bickerton, D.C.
President

