

United States Senate  
WASHINGTON, DC 20510

October 30, 2019

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Verma:

We are writing to express our strong opposition to a provision in the 2020 Medicare Physician Fee Schedule proposed rule regarding the values of E/M office visits in global fee payments. Specifically, CMS proposes to increase the value of standalone E/M office visits beginning in 2021. However, the agency did not propose to increase the value of post-operative E/M visits that are bundled into 10- and 90-day global surgery codes. Arbitrarily adjusting some E/Ms but not others disrupts the relativity of the fee schedule and is in conflict with current law.

Increasing the values for some E/M services but not for others disrupts the relativity mandated by Congress as part of the Omnibus Budget Reconciliation Act (OBRA) of 1989 (P.L. 101-239). Since the fee schedule was established, E/M codes have been revalued three times. Each time the payments for office/outpatient visits were increased, CMS also adjusted the bundled payments to account for the increased values of the E/M portion of the global codes.

Additionally, the Medicare statute specifically prohibits CMS from paying physicians differently for the same work, and the “Secretary may not vary the . . . number of relative value units for a physicians’ service based on whether the physician furnishing the service is a specialist or based on the type of specialty of the physician.”<sup>1</sup> Failing to adjust the global codes as proposed is equivalent to paying some physicians less for providing the same E/M services.

Finally, through the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA; P.L. 114-10), Congress required CMS to collect data on the number and level of visits furnished in a global period. Although CMS may have concerns regarding applying the E/M changes to global codes while data collection is ongoing, as supporters of section 523(a) of MACRA, we believe nothing in the statute precludes CMS from adjusting surgical services before the collection is complete. If CMS believes that certain codes should be identified for further review of the number of post-operative visits, that should be a separate process under the misvalued code initiative.

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<sup>1</sup> 42 U.S. Code §1395w-4(c)(6).

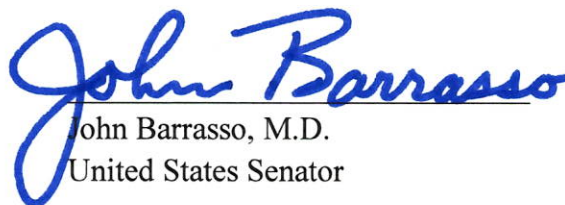
Therefore, we respectfully request that if CMS adjusts the office/outpatient E/M codes, then such adjustments should also be made to the E/M component of the global codes in order to maintain the relativity in the Medicare Physician Fee Schedule and to ensure that, as the law requires, physicians receive the same payment for the same services.

Thank you for your attention to this important issue.

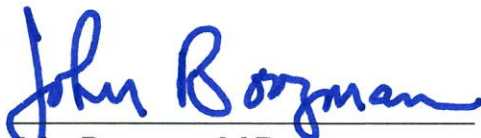
Sincerely,



Rand Paul, M.D.  
United States Senator



John Barrasso, M.D.  
United States Senator



John Boozman, M.D.  
United States Senator