

## Government Relations

### CR News

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# CMS Announces Final Rule Medicare Physician Fee Schedule Payment Rates & Policies for 2011- Plus Emergency Update

Effective CY January 1, 2011

On November 2, 2010, the Centers for Medicare & Medicaid Services (CMS) posted a final rule for Medicare payments in the physician fee schedule (MPFS) for calendar year (CY) 2011. CMS published this information in the November 29, 2010, *Federal Register*. In addition to payment policy and payment rate updates, the MPFS addresses a number of provisions of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the "Affordable Care Act").

On December 29, 2010, an emergency update to the CY 2011 MPFS database was released amending MPFS policies, payment indicators, RVUs (relative value units) and payment rates effective January 1, 2011, as required by the Medicare and Medicaid Extenders Act of 2010, discussed later in this article. Of importance, CMS published the updated Conversion Factor (CF) for CY 2011 at \$33.9764, down eight percent (8%) from the CY 2010 CF. The reduction is due to CMS requirements to maintain budget neutrality and the effects of the Medical Economic Index (MEI) rescaling. For more details of CMS Transmittal 828, Change Request 7300, [click here](#), or find URL links provided at the end of this article.

**Background MPFS:** Since 1992 Medicare has paid for the services of physicians, non-physician practitioners, and certain other suppliers under the MPFS; a system that pays for covered physicians' services furnished to a person enrolled under Medicare Part B. Under the MPFS a relative value is assigned to each service to capture the amount of work, the direct and indirect (overhead) practice expenses, and the malpractice insurance expenses typically involved in furnishing the service. The higher the number of RVUs assigned to a service, the higher the payment. The RVUs for a particular service are multiplied by a fixed dollar CF and a geographic adjustment factor to determine the payment amount for each service.

The final rule affects physicians and office payment for services paid under the resource based relative value scale (RBRVS), also known as the MPFS billed on the 1500 claim form. Please note: All referenced page numbers are from the *Federal Register*, November 29, 2010.

### Important Nuclear Medicine final CMS policies include:

- **Medicare Sustainable Growth Rate (SGR) [page 73283]:** The Medicare law includes the standard statutory formula that would have resulted in a substantial decrease in payment rates for physician-related services for 2011. However, on December 15, 2010, President Obama signed into law the Medicare and Medicaid Extenders Act of 2010. This new law prevents a scheduled twenty-five percent (25%) payment cut for physicians who treat Medicare patients

from taking effect. This new law includes the SGR fix through December 2011. CMS published the CY 2011 CF as \$33.9764 in the December 29, 2010, transmittal 828, change request 7300.

- **Physician work relative value units remain unchanged after CMS convened a Refinement Panel for Myocardial Perfusion Imaging which reviewed CPT codes 78451 and 78452 [p. 73322].**
- **Self Referral Disclosure Law [p. 73443]:** The Affordable Care Act (ACA) amends the in-office ancillary services exception to the self-referral law as applied to magnetic resonance imaging (MRI), computed tomography (CT), and positron emission tomography (PET), to require a physician to disclose to a patient in writing at the time of the referral that there are other suppliers of these imaging services. CMS finalized this requirement, with modification, from the proposed rule as published this summer.
- **Practice Expense:** CMS continues the second year (at a 50/50 blend) phasing-in over four years the implementation of the American Medical Association (AMA) Physician Practice Information Survey (PPIS) data administered 2007/08 for practice expense (PE) indirect per hour rate. CMS did not reverse its final decision from 2010 for myocardial perfusion imaging codes (CPT codes 78451-78454) and those codes remain at full implementation. Of interest, this years' calculation of PE for all nuclear medicine procedures were favorable, seeing slight increases, in part due to a rebasing and revising of the MEI.
- **Malpractice RVUs for New and Revised Services [p. 73214]:** Medicare law requires CMS to implement a resource based malpractice RVU system for services beginning in 2000. The statute also requires CMS to review and, if necessary, adjust RVUs no less often than every 5 years. The first review was in 2005, with the second in 2010. Going forward for new or revised codes, malpractice will be determined by a direct crosswalk to a similar "source" code. This modified crosswalk presumes the same risk factor for the new/revised code as the source code but uses the work RVUs for the new/revised code to adjust for risk-of-service. CMS plans to continue this policy for 2011-2014.
- **Rolling Five Year Review Criteria [p. 73215]:** In recent years CMS and the AMA Relative Update Committee (RUC) have taken increasingly significant steps to address potentially misvalued codes. This was evident in the 2010 revisions for the bundled myocardial perfusion imaging codes. Most recently, section 1848(c)(2)(K)(ii) of the Act (as added by section 3134 of the ACA) directed the Secretary to specifically examine potentially misvalued services in seven categories:
  1. Codes and families of codes for which there has been the fastest growth.
  2. Codes or families of codes that have experienced substantial changes in practice expenses.
  3. Codes that are recently established for new technologies or services.
  4. Multiple codes that are frequently billed in conjunction with furnishing a single service.
  5. Codes with low relative values, particularly those that are often billed multiple times for a single treatment.
  6. Codes which have not been subject to review since the implementation of the RBRVS (the so-called 'Harvard-valued codes').
  7. Other codes determined to be appropriate by the Secretary.

In addition to identifying and reviewing potentially misvalued codes, section 1848(c)(2)(L) (as added by section 3134 of the ACA) specifies that the Secretary shall establish a formal process to validate RVUs under the physician fee schedule (PFS). CMS intends to establish a more extensive validation process of RVUs in the future in accordance with the requirements of section 1848(c)(2)(L) of the Act (as added by section 3134 of the ACA). CMS plans to discuss the validation process in more detail in a future PFS rule. CMS will consider MedPAC analysis presented in October 2010.

- **Expanding Multiple Procedure Payment Reduction (MPPR) [p. 73228]:** Medicare has had the longstanding policy of reducing payment by fifty percent (50%) for the second, and subsequent, surgical procedure furnished to the same patient by the same physician on the same day, largely based on the presence of efficiencies in the physical examination and pre- and post-surgical physician work. Effective January 1, 1995, the MPPR policy, with the same percentage reduction, was extended to nuclear medicine diagnostic procedures (CPT codes 78306, 78320, 78802, 78803, 78806, and 78807).

Most recently, effective July 1, 2010, section 3135(b) of the ACA increased the MPPR on the TC (technical component) of CT, MRI and cardiac CTA (computed tomography angiography) imaging services under the policy from twenty-five percent (25%) to fifty percent (50%) and exempted the reduced expenditures attributable to this further change from the PFS budget neutrality provision (*this means the dollars saved go to pay for other things and do not go back into the Medicare system*).

- **Drugs, contrast agents and biologicals will continue to be paid separately at one hundred six percent (106%) of the average sales price (ASP+6).**
- **Imaging Accreditation of Advanced Diagnostic Imaging Services:** CMS did not give further guidance in this final rule regarding imaging accreditation requirements. All indications from previous transmittals are that nuclear medicine facilities paid in the MPFS for the global (or technical) portion of the procedure must achieve accreditation by a CMS approved organization on or before January 1, 2012. In the last CMS publication, the American College of Radiology (ACR), the Intersocietal Commission for the Accreditation of Nuclear Medicine Laboratories (ICANL), and The Joint Commission (TJC) were the three organizations which had been approved by CMS as valid accreditation organizations. Additionally, CMS published, in a separate **CMS Transmittal R2079CP, Change Request (CR) 7175, October 29, 2010**, an announcement of a **Specialty Code 95**. This will likely be used to identify claims for payment where the requirement for an Advanced Diagnostic Imaging (ADI) Accreditation has been met. Recent news releases by CMS indicate that **hospital providers are excluded from the ADI requirements**, as they bill in the hospital outpatient or inpatient payment systems. In other words, hospitals do not bill in the MPFS for the technical component; therefore, this requirement does not apply. For additional information see the URL link at the bottom of this document.
- **Payment for Radiopharmaceuticals:** There continues to be NO changes for radiopharmaceutical payment methodology in the physician office or IDTF (independent diagnostic testing facility) setting for 2011. Technically, radiopharmaceuticals (RP) such as FDG (fludeoxyglucose F 18 injection) and 99m technetium based agents are not subject to the DRA (Deficit Reduction Act of 2005), nor are drugs or contrast agents. However, for

radiopharmaceuticals carriers do have discretion in how they set RP pricing. The majority of Medicare Administrative Contractors (MACs) currently pay based on invoice cost or average invoice, with a limited number of carriers holding on to the old percentage of average wholesale price (AWP) as noted in the most current publication of *Red Book*. Consistent with requirements of the DRA, this CY 2011 final rule caps payment rates for imaging services under the physician fee schedule at the amount paid for the same services when performed in hospital outpatient departments.

- **PQRI to become PQRS & E-Prescribing Finalized for CY 2011:** CMS is finalizing the proposal to keep measure 147, the only nuclear medicine quality measure available. Additionally, CMS is changing the name for the PQRI to the Physician Quality Reporting System (PQRS). For more details on the PQRS and e-prescribing rules click [here](#) or paste the following link in your Web browser:  
<http://www.cms.gov/apps/media/press/factsheet.asp?Counter=3858&intNumPerPage=10&checkDate=&checkKey=&srchType=1&numD>

#### **Additional Information:**

To read the entire *Emergency Update CMS Transmittal 828 CR 7300* [click here](#) or copy and paste this URL into your Web browser: <http://www.cms.gov/transmittals/downloads/R828OTN.pdf>

To view a chart for *2011 FINAL CMS Revised 12.21.1010 compared to 2010 FINAL Corrected Nuclear Medicine Procedure National Payment Rates & RVU* [click here](#) or copy and paste this URL into your Web browser: [http://interactive.snm.org/docs/hpra/SNM-MPFS\\_Final\\_\(F10-F11\)12.30.10.pdf](http://interactive.snm.org/docs/hpra/SNM-MPFS_Final_(F10-F11)12.30.10.pdf)

To read the entire related *CMS Press Release* [click here](#) or copy and paste this URL into your Web browser: [http://www.cms.gov/apps/media/press\\_releases.asp](http://www.cms.gov/apps/media/press_releases.asp)

To view CMS issued *Fact Sheets* with additional details [click here](#) or copy and paste this URL into your Web browser: [http://www.cms.gov/apps/media/fact\\_sheets.asp](http://www.cms.gov/apps/media/fact_sheets.asp)

To read the *Final Rule CMS-1503-FC* copy and paste either of these URLs into your Web browser: <http://www.cms.gov/PhysicianFeeSched/PFSFRN/list.asp#TopOfPage> or <http://edocket.access.gpo.gov/2010/pdf/2010-27969.pdf>

For the provider education article related to the instruction for *Imaging Accreditation of Advanced Diagnostic Imaging (ADI)*, [click here](#) or copy and paste the following URL into your Web browser: <http://www.cms.gov/MLN MattersArticles/downloads/MM7175.pdf>