

December 23, 2015

The Honorable Andy Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1631-P  
Mail Stop C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Re: File Code-CMS-1631-FC; Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2016 Final Rule; (November 16, 2015).

Dear Acting Administrator Slavitt:

On behalf of the American Society of Retina Specialists (ASRS), our members, and patients, we submit the following comments on the Centers for Medicare and Medicaid Services (CMS) Final Rule on the revisions to Medicare payment policies under the Physician Payment Schedule for calendar year 2016, published in the November 16, 2015 Federal Register (Vol. 80, No. 220 FR, pages 70886-71386, November 16, 2015).

The ASRS is the largest retinal organization in the world, representing over 2700 fellowship-trained members. Retina specialists are board-certified ophthalmologists who have completed fellowship training in the medical and surgical treatment of retinal diseases.

This letter includes ASRS recommendations and comments regarding the following:

- I. Technical Corrections Needed
  - A. Global Period Errors
  - B. Errors on Phase-In
- II. CMS' Inappropriate Use of Physician Time Ratio Calculation to Establish 2016 Interim Final Work Relative Values for Retinal Detachment Repair (CPT Codes 67107, 67108, 67110, and 67113)

I. Technical Corrections Needed

The ASRS joins the RUC in identifying several errors which are detailed below. We anticipate that all the changes in this section will be implemented as technical corrections immediately in CMS files to be ready for January 1, 2016 payments.

A. Global Period Errors

Following the publication of the 2016 MFS Final Rule, the ASRS, through the AMA, notified CMS of the global period discrepancies below.

CPT	Mod	Status	Short Descriptor	Global from CMS - Addendum B	Global on RUC Recommendation
67227		A	Dstrj extensive retinopathy	090	010
67228		A	Treatment x10sv retinopathy	090	010

ASRS Comments:

The ASRS believes that the global period discrepancies between the CMS Addendum B and the RUC recommendation is a typo as CMS officials explicitly approved the global period changes for CPT codes 67227 and 67228 in a communication to the AMA on February 24, 2015. Given this communication, 67227 and 67228 were surveyed and re-evaluated by the RUC under the assumption the global period was 010. This combined with the fact that CMS was at the table when the codes were discussed by the RUC leads us to believe this is a technical error.

ASRS Recommendation:

**ASRS joins the RUC in requesting that CMS make the technical correction to CMS files and the correct global periods being ready for January 1, 2016 payments.**

**B. Errors On Phase-In**

Following the publication of the 2016 MFS Final Rule, the ASRS and AMA separately notified CMS of the errors on phase in for 67108 and 67113 noted below. Since codes from the same family of retina codes were included in phase-in, we believe it was a technical error that CPT codes 67108 and 67113 were not included. As a result, the percent change is higher in error.

CPT Code	Short Descriptor	2015 Total FAC RVUs	2016 Total FAC RVUs	FAC Pct Change
67108	Repair detached retina	45.39	30.83	-32%
67113	Repair retinal detach cplx	49.34	38.09	-23%

ASRS Recommendation:

**The ASRS joins the RUC in asking CMS to address these errors immediately in the CMS files and appropriately include CPT codes 67108 and 67113 in phase-in to be ready for January 1, 2016 payments.**

- II. CMS' Inappropriate Use of Physician Time Ratio Calculation to Establish 2016 Interim Final Work Relative Values for Retinal Detachment Repair (CPT Codes 67107, 67108, and 67110)

<b>CPT Code</b>	<b>Descriptor</b>	<b>RUC Rec RVU</b>	<b>CMS Proposed RVU</b>	<b>CMS Work RVU Decision</b>
67107	Repair of retinal detachment; scleral buckling (such as lamellar scleral dissection, imbrication or encircling procedure), including, when performed, implant, including, when performed, cryotherapy, photocoagulation, and drainage of subretinal fluid	16.00	14.06	Disagree
67108	Repair of retinal detachment; with vitrectomy, any method, including, when performed, air or gas tamponade, focal endolaser photocoagulation, cryotherapy, drainage of subretinal fluid, scleral buckling, and/or removal of lens by same technique	17.13	15.19	Disagree
67110	Repair of retinal detachment; by injection of air or other gas (e.g., pneumatic retinopexy)	10.25	8.31	Disagree

Summary of CMS Actions:

- 67107: Multiplying the current work RVU by the ratio between the RUC recommended intra-service time and the existing intra-service time (14.06 RVUs= 16.71 RVUs X (90 minutes /107 minutes)).
- 67108: Adding the 1.13 RVU increment, between the RUC recommendations for 67108 and 67107, to the CMS derived work RVU for 67107, resulting in a new RVU of 15.09.
- 67110: Subtracting the 5.75 RVU increment, between CPT code 67107 and 67110, from the CMS derived work RVU for 67107, resulting in a new RVU of 8.31.

ASRS Comments:

The ASRS believes that CMS inappropriately rejected the RUC recommended RVUs for 67107, 67108 and 67110 and instead arbitrarily established alternate work RVU values based on changes in intra-service time. The Agency's inconsistent use of the time ratio methodology has rendered it inaccurate for valuation purposes. By choosing the starting base work value and/or physician time at random, CMS is essentially using a reverse building block approach to achieve the work value it wants.

By using this methodology, CMS is reducing the valuation of this service into a basic formula with the only variable being either the new total physician time or the new intra-service physician time. This approach is based on the incorrect assumption that the per minute physician work intensity established is permanent regardless of when the service was last valued and that all components of physician time (pre-service, intra-service, post-service and post-operative visits) has identical intensity. Moreover using this methodology for only some services under review creates inherent payment disparities in a payment system which, at its core, is based on relative valuation. Finally, this valuation methodology violates statute Sec. 1848. [42 U.S.C.

1395w-4] (a) (i), which states “[t]he Secretary shall determine a number of work relative value units for the service based on the relative resources incorporating physician time and intensity required in furnishing the service.”

This methodology is particularly troublesome for codes, such as 67107 and 67108, that were last valued by the Harvard study over 20 years ago and never RUC surveyed. By applying the reduction in intra-service time from the Harvard values to the recent survey to justify additional reductions, CMS used an inappropriate methodology that was made worse because the denominator (Harvard time) was inaccurate.

While vitreoretinal surgery can be performed in less time than when it was valued by Harvard, the intensity of the service per minute has increased significantly. This reduction in overall time was made possible by the introduction of -23 and -25 gauge sutureless vitrectomy. Now retina specialists are able to spend less time opening and closing cases and a higher percentage of time working inside the eye.

CMS’ further reductions to the RUC cuts are arbitrary and clearly do not take into consideration that retinal detachment repair is an intense and critical procedure due to the emergency nature of retinal detachment and the complex post-op services that are required. This is an extremely high-stakes surgery, where failure will result in permanent blindness.

In order to maintain the integrity of RBRVS, the ASRS recommends that CMS reverse its decision to use alternate values developed under its intra-service time ratio methodology and instead adopt the RVUs recommended by the RUC.

#### ASRS Recommendations:

- **The ASRS joins the RUC in recommending that CMS use magnitude estimation, instead of inappropriate calculations to arrive at work RVUs for CPT codes 67107, 67108 and 67110.**
- **The ASRS further joins the RUC in urging CMS to accept work RVUs of 16.00 for code 67107, 17.13 for 67108 and 10.25 for CPT code 67110.**
- **The ASRS also requests Refinement Panel consideration for these services.**
- **The ASRS recommends that CMS present its alternative methodology to the RUC at its April meeting so that it can be discussed and compared to current valuation methodologies used by the RUC.**

### III. Conclusion

The ASRS thanks CMS for its careful consideration of our comments on the CMS Final Rule on the revisions to Medicare payment policies under the Physician Payment Schedule for calendar year 2016, published in the November 16, 2015 Federal Register (Vol. 80, No. 220 FR, pages

70886-71386, November 16, 2015). If we may provide any additional information, please contact Jill Blim, ASRS Executive Vice President at [jill.blim@asrs.org](mailto:jill.blim@asrs.org).

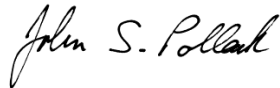
Sincerely,



Tarek S. Hassan, MD  
President



Mark S. Humayun, MD, PhD  
President-Elect



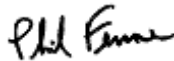
John S. Pollack, MD  
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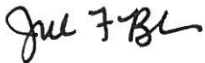
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