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August 23, 2016

Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Slavitt:

The undersigned national medical organizations strongly recommend that the Centers for Medicare and Medicaid Services (CMS) restore the Refinement Panel to serve as the relative value appeals process that was appropriately in place prior to 2011. The American Medical Association (AMA) reviewed the need for an appeals process at the 2016 AMA House of Delegates Annual Meeting and determined that having an objective, transparent and consistently-applied formal appeals process in place is paramount and that the original Refinement Panel process would best serve this function.

For more than 25 years, CMS has convened the Refinement Panel to carefully review public comments, hear testimony from practicing physicians and independently recommend refinements to relative values. Until recently, the Refinement Panel conclusions were uniformly implemented by the Agency, as shown in the attached table entitled, Attachment A: *History of the CMS Refinement Panel*. This historical information provides evidence that CMS did rely upon the Refinement Panel as an appeals process.

In 2011, CMS modified the process to only consider appeals which include "new clinical information." Additionally, the Agency began to independently review each of the Refinement Panel decisions when determining which values to actually finalize. Since the implementation of these changes, CMS has rejected the majority of requests for Refinement Panel review and only accepted 36 percent of recommendations from the Panel. With the dysfunctionality of the current iteration of the Refinement Panel process, CMS no longer relies upon outside stakeholders to provide accountability. Absent any independent mechanism for appeal, CMS officials are free to make valuation decisions without having to provide a compelling rationale when rejecting relative value recommendations from the RUC and other stakeholders.

In the CY 2016 NPRM, CMS proposed to permanently eliminate its Refinement Panel process. In the CY 2016 Final Rule, instead of finalizing the exact language of that proposal, CMS announced they would "...retain the ability to convene Refinement Panels for codes with interim final values" and that "...CY 2016 is the final year for which we anticipate establishing interim final values for existing services." The Agency did not have to formally announce the process' elimination to achieve the same outcome, since there will no longer be any codes eligible for review. We object to the CMS intention to make this vital process obsolete due to a technicality. We strongly urge CMS to open Refinement Panel review to all procedures and services that are under CMS review during the current rulemaking process. In addition, as part of their original proposal to eliminate the Refinement Panel, current CMS officials objected to the widely-held understanding that the Refinement Panel served as a formal appeals process prior to 2011.

The undersigned medical organizations strongly disagree with this unsubstantiated position, as the original Refinement Panel was clearly a text-book example of a standard appeals process. The original Refinement Panel process, coupled with the input from the AMA/Specialty Society RVS Update Committee (RUC), would provide the best mechanism to utilize the expertise from physicians and other health care professionals to determine the resources utilized in the provision of a service to a Medicare beneficiary. We are hopeful that CMS will return to a Refinement Panel process that is fair to physicians, other health care professionals and the patients that they serve.

Sincerely,

American Medical Association
Academy of Nutrition and Dietetics
Advocacy Council of Allergy, Asthma and Immunology
AMDA – The Society for Post-Acute and Long-Term Care Medicine
American Academy of Allergy, Asthma & Immunology
American Academy of Audiology
American Academy of Child and Adolescent Psychiatry
American Academy of Dermatology Association
American Academy of Hospice and Palliative Medicine
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Otolaryngology-Head and Neck Surgery
American Academy of Pain Medicine
American Academy of Pediatrics
American Academy of Physical Medicine and Rehabilitation
American Academy of Sleep Medicine
American Association of Hip & Knee Surgeons
American Association of Neurological Surgeons
American Association of Neuromuscular & Electrodiagnostic Medicine
American Association of Orthopaedic Surgeons
American College of Allergy, Asthma and Immunology
American College of Cardiology
American College of Chest Physicians
American College of Emergency Physicians
American College of Gastroenterology
American College of Mohs Surgery
American College of Obstetricians and Gynecologists
American College of Osteopathic Surgeons
American College of Phlebology
American College of Physicians
American College of Radiation Oncology
American College of Radiology
American College of Rheumatology
American College of Surgeons
American Congress of Obstetricians and Gynecologists
American Gastroenterological Association
American Geriatrics Society
American Nurses Association

American Occupational Therapy Association
American Optometric Association
American Orthopaedic Foot and Ankle Society
American Osteopathic Association
American Physical Therapy Association
American Podiatric Medical Association
American Psychiatric Association
American Society for Blood & Marrow Transplantation
American Society for Clinical Pathology
American Society for Dermatologic Surgery Association
American Society for Gastrointestinal Endoscopy
American Society for Radiation Oncology
American Society for Surgery of the Hand
American Society of Anesthesiologists
American Society of Breast Surgeons
American Society of Cataract and Refractive Surgery
American Society of Clinical Oncology
American Society of Colon and Rectal Surgeons
American Society of Cytopathology
American Society of Dermatopathology
American Society of Echocardiography
American Society of General Surgeons
American Society of Hematology
American Society of Interventional Pain Physicians
American Society of Neuroimaging
American Society of Neuroradiology
American Society of Plastic Surgeons
American Society of Retina Specialists
American Society of Transplant Surgeons
American Speech-Language-Hearing Association
American Thoracic Society
American Urogynecologic Society
American Urological Association
College of American Pathologists
Congress of Neurological Surgeons
Heart Rhythm Society
Infectious Diseases Society of America
International Society for the Advancement of Spine Surgery
Medical Group Management Association
National Association of Social Workers
North American Neuro-Ophthalmology Society
North American Spine Society
Obesity Medicine Association
Renal Physicians Association
Society for Cardiovascular Angiography and Interventions
Society for Vascular Surgery
Society of American Gastrointestinal and Endoscopic Surgeons
Society of Gynecologic Oncology

Andrew M. Slavitt
August 23, 2016
Page 4

Society of Interventional Radiology
Society of Nuclear Medicine and Molecular Imaging
Society of Thoracic Surgeons
Spine Intervention Society

Attachment

Attachment A: History of the CMS Refinement Panel

| Refinement Panel Year | Number of Codes Reviewed by the Panel | Codes with Final Value Based on Refinement Panel Recommendation | Percent with Final Value Based on Refinement Panel |
|------------------------------|--|--|---|
| 1992 | 791 | 616 | 78% |
| 1993 | 42 | 40 | 95% |
| 1994 | 24 | 24 | 100% |
| 1995 | 18 | 18 | 100% |
| 1996 | 73 | 68 | 93% |
| 1997 | 9 | 9 | 100% |
| 1998 | 0 | N/A | N/A |
| 1999 | 0 | N/A | N/A |
| 2000 | 11 | 11 | 100% |
| 2001 | 9 | 9 | 100% |
| 2002 | 1 | 1 | 100% |
| 2003 | 10 | 10 | 100% |
| 2004 | 2 | 2 | 100% |
| 2005 | 2 | 2 | 100% |
| 2006 | 35 | 35 | 100% |
| 2007 | 16 | 16 | 100% |
| 2008 | 0 | N/A | N/A |
| 2009 | 0 | N/A | N/A |
| 2010 | 4 | 4 | 100% |
| 2011 | 143 | 47 | 33% |
| 2012 | 17 | 6 | 35% |
| 2013 | 12 | 2 | 17% |
| 2014 | 19 | 11 | 58% |
| 2015 | 5 | 1 | 20% |
| 2016 | 12 | 7 | 58% |