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September 26, 2019

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: **CMS-1715-P**
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: File Code CMS-1717-P; Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Proposed Revisions of Organ Procurement Organizations Conditions of Coverage; Proposed Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Proposed Changes to Grandfathered Children's Hospitals -Within-Hospitals (August 14, 2019)

Dear Administrator Verma:

The North American Neuromodulation (NANS) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) Notice of Proposed Rule Making (*Proposed Rule*) on the revisions to Medicare payment policies under the Hospital Outpatient Prospective Payment /Ambulatory Surgical Center Payment Systems and Quality Reporting Programs for calendar year (CY) 2020, published in the August 14, 2019 *Federal Register*.

NANS is a multi-specialty association of more than 1,600 physicians dedicated to the development and promotion of the highest standards for the practice of neuromodulation procedures in the diagnosis and treatment of the nervous system, including neurosurgeons, orthopedic spine surgeons, anesthesiologists, physiatrists, psychologists, urologists, and neurologists. We are committed to working with CMS and other stakeholders to promote the highest quality, most efficient, patient care for patients dealing with chronic neuromuscular pain.

NANS would like to comment on the section of the *Proposed Rule* related to ASC payment settings for interspinous spacer devices, CPT codes 22867 and 22869. We have heard from many of our members, both pain physicians and spine surgeons, who are concerned and who will be affected by this rule change.

Proposed APC Settings for Specific Codes For CY 2020

CPT codes 22869

CMS proposes to move CPT code 22869 “Insertion of interlaminar/interspinous process stabilization/distraction device without open decompression or fusion, including image guidance when performed, lumbar; single level” from APC 5116 (Level 6 Musculoskeletal Procedures) to 5115 (Level 5 Musculoskeletal Procedures). If finalized, this change would result in a 22% decrease in payment for a procedure performed in outpatient hospital departments and ambulatory surgical centers (ASCs). This procedure has resulted in significant pain relief and improved function for thousands of patients and has also led to a significant reduction (as much as 85 percent), in opioid utilization for individuals suffering from chronic back / spinal pain secondary to spinal stenosis in the peer reviewed literature. If finalized, a 22% reduction in payment for the procedure described by CPT code 22869 will create a deterrent to facilities offering this procedure, not only for hospital outpatient departments, but also for ASCs . If this procedure is not available at these facilities many patients will undergo more aggressive and more risky open invasive surgery for treatment of their spinal stenosis including laminectomy and fusion. This rule change will serve to encourage physicians and facilities to only offer this more aggressive alternative treatment option which will ultimately lead to much greater costs to Medicare.

CMS’ decision to move 22869 to the Level 5 Musculoskeletal assignment appears to be based on incorrect or inappropriate charges from a handful of facilities. Because this procedure was only performed in a small number of facilities in 2018, the potential for a few hospitals to disproportionately impact the geometric mean cost is great. This is supported by the fact the geometric mean cost for CPT 22869 from 2018 to 2019 decreased by 30% while the median cost only decreased by 4%, indicating that a few outlier facilities could have drastically changed the results.

We believe that if there had been properly reported charges for the implantable device, the geometric mean costs for CPT code 22869 would have continued to fit in APC 5116 (Musculoskeletal Level VI). We also believe that this was a short-term error and not likely to appear in future year’s charge data. Therefore, we strongly recommend that CMS avoid unintentionally creating a payment deterrent to a proven, less costly, treatment alternative for spinal stenosis, a condition that effects millions of Americans. (Note: Only a portion of patients with stenosis from specific anatomic causes are a candidate for this procedure).. We request that CMS maintain the current assignment of this procedure to its current, CY 2019, APC assignment of 5116 rather than reassigning to APC 5115 as proposed for CY 2020.

Thank you for your time and consideration of NANS comments. We greatly appreciate the opportunity to participate in efforts to more efficiently and accurately capture current care delivery. We commend CMS on its continued efforts to improve care quality and access. If you have any questions on our comments, please do not hesitate to contact Chris Welber, NANS Executive Director at cwelber@neuromodulation.org.

Sincerely,



B. Todd Sitzman, MD, MPH
President
North American Neuromodulation Society (NANS)



David Kloth, MD
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Co-Chair NANS Advocacy and Policy Committee



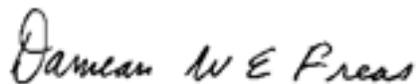
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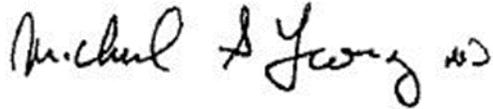
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