

Part B Insider (Multispecialty) Coding Alert

Medicare Physician Fee Schedule: Here Are 4 Proposals on the Table for CY 2023

Telehealth, E/M, mental health are major talking points in the MPFS proposed rule.

As the pandemic continues to ebb and flow, you may have assumed the COVID-inspired policies would fall to the wayside, but that's not the case. Read on for some proposed changes to Medicare reimbursement for next year.

Background: The Centers for Medicare & Medicaid Services (CMS) issued the calendar year (CY) 2023 Medicare Physician Fee Schedule (MPFS) proposed rule - and it's chock full of proposed billing revisions, payment provisions, and more. One of the 2023 negatives includes a suggested conversion factor (CF) cut that healthcare advocates consider a setback for next year - and are already lobbying Congress for help (see story, p. 1).



The proposed rule was published in the Federal Register on July 29. Here's a glimpse of four proposals that may impact your Medicare pay and policies:

1. Anticipate more E/M services updates. To better align with previous changes made to outpatient/office E/M services codes, CMS proposes to push forward with AMA CPT® Editorial Panel-approved revisions to coding and guidelines for "Other E/M visits."

"Similar to the approach we finalized in the CY 2021 PFS final rule for office/outpatient E/M visit coding and documentation, we are proposing to adopt most of these changes in coding and documentation for Other E/M visits (which include hospital inpatient, hospital observation, emergency department, nursing facility, home or residence services, and cognitive impairment assessment) effective January 1, 2023," CMS says in a fact sheet on the rule.

In a nutshell, the changes that CMS plans to accept for "Other E/M visits" include adopting new code descriptors/definitions; utilizing interpretive guideline revisions for levels of medical decision making (MDM); offering time or MDM as an option to choose code level; and nixing history and exam to determine code level, the proposed rule indicates.

2. Know that telehealth services policymaking continues to evolve. First, CMS proposes to extend coverage of the temporary codes it didn't add to its Medicare telehealth services list under Categories 1, 2, or 3 during the public health emergency (PHE), until 151 days after the PHE ends, the proposed rule indicates.

Plus, CMS proposes to add 54 codes to Category 3 of the Medicare telehealth services list. Remember, however, that the agency had originally earmarked the Category 3 codes to "expire at the end of the year in which the PHE ends, but CMS extended coverage of those codes through December 31, 2023," remind attorneys **Rachel B. Goodman, Nathaniel M. Lacktman, and Thomas B. Ferrante** with Foley & Lardner LLP.

"In this year's proposed PFS rule, CMS declined any further extension, so all Category 3 codes will expire at the end of 2023. In the event the PHE extends well into 2023, CMS said it will consider a further extension of the Category 3 codes at that time," explain Goodman, Lacktman, and Ferrante in online legal analysis.

CMS aims to implement telehealth provisions that were outlined in the Consolidated Appropriations Act, 2022, too - and prepare Medicare clinicians for a post-COVID landscape.

"Of note is CMS' request for comments on what types of services could be provided under direct supervision with virtual availability of the supervising practitioner," note attorneys **Carrie Nixon, Rebecca Gwilt, Kaitlyn O'Connor, and Casey Papp** with Nixon Gilt Law in online legal analysis. "Much real estate in the 2023 Proposed Rule is devoted to preparing providers for the eventual end of the PHE, and how this will impact billing and reimbursement, which clearly signals that the end is near if Congress doesn't set up and take action," caution the Nixon Gilt attorneys.

3. Expect delays on the split/shared policy ramp-up. In the CY 2022 rule, CMS planned to implement its split/shared policy that whoever provides the "substantive portion of the visit" bills for the services - whether it's the physician or the nonphysician practitioner (NPP). The agency intended for the new definition of substantive portion to cover "more than half of the total time" to also go live in CY 2023, but instead have opted to push the start date for the policy update to CY 2024.

For CY 2023, "clinicians who furnish split (or shared) visits will continue to have a choice of history, physical exam, or medical decision making, or more than half of the total practitioner time spent to define the substantive portion, instead of using total time to determine the substantive portion," CMS proposes.



4. Register these behavioral health proposals. Even before the pandemic, CMS began focusing efforts toward boosting mental health services for Medicare beneficiaries and laid out some goals in the 2022 CMS Behavioral Health Strategy. In the CY 2023 proposed rule, the agency follows up on that initiative with a few policies to improve access to quality mental healthcare.

First, CMS proposes to make an exception to the direct supervision requirement under its "incident to" provision,



"allow[ing] behavioral health services provided under the general supervision of a physician or NPP, rather than under direct supervision, when these services or supplies are provided by auxiliary personnel incident to the services of a physician (or non-physician practitioner)," the fact sheet says.

The agency is also proposing to cover behavioral health services administered by clinical psychologists and licensed clinical social workers as part of primary care; to add a new remote therapeutic monitoring code for cognitive behavioral monitoring; and to bundle certain chronic care treatment including opioid recovery in rural areas and for the homeless, according to the proposed rule fact sheet.

Resource: Review the CY 2023 MPFS proposals at www.govinfo.gov/content/pkg/FR-2022-07-29/pdf/2022-14562.pdf.