CMS issues Medicare Physician Fee Schedule proposed rule for 2021

Rick L. Hindmand | Tuesday, August 11, 2020

UPDATE: The Medicare Physician Fee Schedule proposed rule was published in the Federal Register on August 17.

On August 3, 2020, the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule for Medicare payment and related policy changes under the Medicare Physician Fee Schedule (PFS) going into calendar year 2021. This proposed rule would help to implement a recent Executive Order from the Trump administration which aims to permanently expand telehealth benefits for Medicare beneficiaries following the COVID-19 Public Health Emergency (PHE) and increase access to care in rural communities.

Overall, the PFS proposed rule would continue various PHE changes that have allowed expanded healthcare flexibility and reduced regulatory burdens, in addition to changing reimbursement in various ways, several of which are summarized below.

CY2021 PFS Conversion Factor

CMS is proposing a conversion factor of $32.36, a decrease from the CY2020 PFS factor of $36.09. As proposed, this change would result in a 10.6% reduction, the lowest factor established (through a percentage reduction) over many years. See the American Medical Association's timeline of Medicare conversion factors.

Continued Medicare Telehealth Services

During the PHE, CMS added over 100 telehealth services that can be reimbursed under Medicare. CMS is proposing to permanently allow some of those services to continue via telehealth and to extend payment for certain services, such as emergency department visits, home visits and psychological testing, through the calendar year in which the PHE ends. See Table 12 of the proposed rule for proposed additions to the permanent and temporary Medicare telehealth services lists, as well as services that CMS does not intend to cover. CMS invites comments on which services should be eligible for telehealth coverage.

Direct Supervision Through Telehealth

The proposed rule would clarify that incident to services can be provided through telehealth under direct supervision. In addition, CMS would extend the temporary policy allowing practitioners to satisfy direct supervision requirements virtually using real-time, interactive audio and video technology until the later of the end of the calendar year in which the PHE ends or December 31, 2021. CMS noted that this extension will allow clinicians to adjust their supervision and also allow CMS to consider whether it should adopt this policy permanently. CMS has expressed concern about potential patient safety issues and is requesting comment on possible "guardrails" and limitations of virtual supervision.

Audio-Only Evaluation and Management Services

CMS announced that it plans to end payment for audio-only telephone evaluation and management (E/M) services when the PHE expires. CMS, however, is requesting comment on possible payment for audio-only services, and whether this change should be permanent or should remain in effect for only a year following the end of the PHE.

Payment for Evaluation and Management Visits

CMS indicates that E/M visits account for approximately 20 percent of the spending under the PFS. After collaboration with the American Medical Association and other stakeholders, CMS is proposing to further simplify coding and documentation requirements for CY2021 and is estimating that this would save providers approximately 2.3 million hours per year in paperwork burdens. CMS also requests comments on how to clarify the definition of HCPCS add-on code GPC1X as it relates to visit complexity.

Remote Patient Monitoring

CMS provides guidance on a number of remote patient monitoring (RPM) CPT codes and related restrictions. See further information here.

Changes to the Clinical Laboratory Fee Schedule

The proposed rule would change Protecting Access to Medicare Act requirements which were modified under the Further Consolidated Appropriations Act of 2020 and the Coronavirus Aid, Relief, and Economic Security (CARES) Act relating to clinical diagnostic laboratory tests that are not advanced diagnostic laboratory tests by delaying the next data reporting period until early 2022. In addition, CMS suggests phased-in payment reductions under the Medicare private-payor rate-based Clinical Laboratory Fee Schedule through 2024, with a 0.0 percent reduction for CY2021 and a 15 percent reduction cap for the following three years.

Non-Physician Supervision of Diagnostic Tests

The proposed rule would allow nurse practitioners (NPs), clinical nurse specialists (CNSs), physician assistants (PAs) and certified nurse-midwives (CNMs) to supervise the performance of diagnostic tests,

subject to state scope of practice laws.

Coverage for Opioid Use Disorder Treatment Services

The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act previously established a new Part B benefit for opioid use disorder treatment. For CY2021, CMS is proposing two new add-on codes for the use of naloxone and certain opioid treatment provider enrollment flexibilities, as well as changes to electronic prescribing of controlled substances under § 2003 of the SUPPORT Act. CMS is also providing additional guidance on billing and reimbursement.

Public comments on the proposed rule are due by October 5, 2020.

For more information on these changes, please contact the attorneys below.

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