

Report on Medicare Compliance Volume 30, Number 20. May 24, 2021

CMS: Billing Split Visits Is OK Despite Transmittal; Power of Good Guidance Rule Is on Display

By Nina Youngstrom

CMS has given the green light to billing split/shared evaluation and management (E/M) services even though it removed all relevant guidance from the *Medicare Claims Processing Manual*. In Medicare Transmittal 10742,^[1] which took effect May 9, sections on split/shared E/M services for providers in hospitals and nursing facilities have now been “left intentionally blank for future updates.”

But a CMS spokesperson told *RMC* in a May 19 email that “practices can continue to submit claims for the services covered by the withdrawn sections until the sections are updated. In the absence of these manual provisions, claims involving Evaluation and Management (E/M) services performed in part by both a physician and non-physician practitioner (NPP)...will remain subject to the requirements of Medicare law and publicized regulations.” The spokesperson added that the split/shared policy will be updated in a forthcoming regulation, but CMS “will not speculate where or when this future rulemaking will be made public.”

That’s good news for providers, who were caught off guard by the sudden disappearance of the language and nervous about split/shared billing. “It’s very appropriate CMS is continuing to honor claims based on the longstanding practices of the industry,” said attorney Larry Vernaglia, with Foley & Lardner in Boston.

There are larger implications in the saga that has played out over split/shared billing, which already is a “weird creature created by the manuals,” said Minneapolis attorney David Glaser. That’s because CMS deleted the language in response to a petition filed under the regulation on Good Guidance Practices.^[2] In a nutshell, the regulation, which was published in the Dec. 7, 2020, *Federal Register*, prevents CMS and other HHS agencies from relying on subregulatory guidance (e.g., *MLN Matters*) unless it’s rooted in a law or regulation. The Good Guidance regulation also allows private parties, such as providers, to petition HHS to withdraw guidance that has purportedly strayed too far from a law or regulation. “They don’t want the agency to graft on pieces of new rules that were never promulgated in the regulations,” Vernaglia said.

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