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Another Delay for Appropriate Use Penalties Is Proposed; Hospitals Still Find Glitches

By Nina Youngstrom

Partly because of the COVID-19 pandemic, CMS is again planning to delay pulling the trigger on the penalty phase of the appropriate use criteria (AUC) requirement for advanced diagnostic imaging, which was scheduled to take effect in January 2022, according to the 2022 proposed Medicare Physician Fee Schedule (MPFS) rule.^[1] If the delay is finalized, penalties for not getting an AUC consultation will kick in Jan. 1, 2023, or at the end of the year in which the public health emergency is over (whichever is later), and eventually outlier physicians will be put on prior authorization. The extra time could help hospitals and physicians work through glitches as they adapt to their clinical decision support mechanism (CDSM), an electronic tool that indicates whether the imaging services are appropriate.

“We have been testing and using a CDSM tool for a while,” said Patrick Kennedy, executive director of hospital compliance at UNC Health in North Carolina. “We are seeing the same potential risk on the hospital and professional side.” From a compliance standpoint, it’s helpful because “this is not just a hospital thing. The requirements are the same on both sides of the fence.” But there’s a disconnect between the ordering physician, who must do the AUC consultation, and the radiologists and hospitals that will lose payment for advanced imaging (e.g., CT scans, MRIs and PET scans) if everything doesn’t fall into place. That includes ordering physicians using the CDSM and radiologists and hospitals reporting modifiers and condition codes on their claims.

Delay Proposed for AUC Penalties

“Where it gets a little difficult and interesting is if the AUC consultation is not done and the order is sent to the radiologist and they do the exam, the radiologist is the one who doesn’t get paid,” said Kathryn Keysor, senior director of economics and health policy at the American College of Radiology. That’s entirely separate from whether Medicare considers the imaging test medically necessary, she noted. Providers are still required to comply with local and national coverage determinations.

AUC consultations are required for imaging performed at outpatient hospital departments (including patients in the emergency room and observation), ambulatory surgery centers and independent diagnostic testing facilities, with exceptions for emergency medical conditions as defined by the Social Security Act and the Emergency Medical Treatment and Labor Act and for critical access hospitals.

Health systems stand to lose a lot of money if they don’t comply with AUC consultation requirements, said Melody W. Mulaik, president of Revenue Cycle Coding Strategies. “You want to have conversations with ordering providers now,” she advised. “Like any big change management project, the sooner you can let people know and get them used to it, the better. This is not something you want to spring on people.” CMS is worried about inappropriate claim denials from another perspective. As it said in the proposed 2022 MPFS rule, which was published in the July 23 *Federal Register*, implementation will come when CMS has “the necessary edits established in the claims processing system and we begin using those edits to deny Medicare claims that fail to

report the required AUC consultation information.”

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