

# Report on Medicare Compliance Volume 30, Number 40. November 08, 2021

## MPFS Rule: With New Modifiers, Split Billing Criteria, It's 'Getting More Complicated'

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By Nina Youngstrom

Keeping up its telehealth momentum, CMS has finalized the extension of coverage for certain telehealth services through 2023 in the final Medicare Physician Fee Schedule (MPFS) rule for 2022, which was released Nov. 2.<sup>[1]</sup> But other areas of the rule give attorneys pause, because they say CMS has introduced compliance challenges with requirements for split/shared and critical care billing, new modifiers and even telebehavioral health flexibilities.

"It is only getting more complicated," said Richelle Marting, an attorney and certified coder in Olathe, Kansas. She's worried new modifiers and other claim reporting requirements are creating opportunities for Medicare reviewers to deny claims when physicians and other clinicians don't check all the boxes, even though some provisions are intended to increase access to care. "These added billing requirements move the needle far away from other regulatory efforts aimed at reducing administrative burden," she said.

In an area of considerable concern, the proposed rule revamps what used to be Medicare manual guidance on billing for split/shared services and critical care. In Medicare Transmittal 10742,<sup>[2]</sup> which took effect in May, CMS removed the guidance, which didn't stem from a law or regulation, in response to a petition under the Good Guidance Practices rule so it could be promulgated through notice and comment rulemaking. Now that's done and split/shared billing looks very different, which some attorneys find unfortunate operationally and financially.

"It is effectively a mechanism of lowering reimbursement," said attorney David Glaser, with Fredrikson & Byron in Minneapolis.

With split/shared billing, Medicare pays 100% of the physician fee schedule for an evaluation and management (E/M) service provided jointly by a physician and nonphysician practitioner (NPP) at an institution (e.g., hospital, skilled nursing facility). Similarly, split/shared billing may be used to decide which physician within a group practice bills for an encounter with a patient on a single date of service.

Chapter 12 of the *Medicare Claims Processing Manual* previously addressed split/shared services in two sections: Sec. 30.6.1 said "when a hospital inpatient/hospital outpatient or emergency department E/M is shared between a physician and an NPP from the same group practice and the physician provides any face-to-face portion of the E/M encounter with the patient, the service may be billed under either the physician's or the NPP's UPIN/PIN number." Essentially, the physician just had to check in with the patient in person, Glaser said. However, Sec. 30.6.13, which defined a split/shared visit in the skilled nursing facility/nursing facility setting, said "the physician and a qualified NPP each personally perform a substantive portion of an E/M visit face-to-face with the same patient on the same date of service."

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