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Final MPFS Rule: Split/Shared Billing Gets a New Look, Complexity Codes Are Finally Billable

By Nina Youngstrom

In a surprise move, CMS swapped out its definition of “substantive portion” under split/shared billing for the CPT Editorial Panel’s definition, according to the final 2024 Medicare Physician Fee Schedule (MPFS) rule announced Nov. 2.^[1] Next year and beyond, physicians and nonphysician practitioners will continue to choose between time and medical decision making (MDM) when coding a split/shared evaluation and management (E/M) visit, but they will use a different analysis to determine who provided the substantive portion of MDM. In a nutshell, it’s driven by the physician or nonphysician practitioner (NPP) who develops the management plan and assumes responsibility for the patient’s risk.

“It was unexpected,” said Richelle Marting, an attorney and certified coder in Olathe, Kansas. But aligning with CPT rules brings clarity to a fraught area of E/M visits and keeps Medicare in the same place as other payers.

That’s the page-turner in the MPFS rule. Other than that, “it seems like a safe final rule” with many provisions finalized as is from the proposed version, she said. “CMS is trying to lessen the burden while folks are trying to unwind public health emergency policies.” Noteworthy provisions include the activation of E/M complexity add-on codes, the preservation of virtual supervision for telehealth incident-to services, the addition of two telehealth codes and the welcoming of marriage and family therapists/mental health counselors into the Medicare fold. Hospitals also may continue billing for outpatient physical, occupational and speech therapy, diabetes self-management training (DSMT) and medical nutrition therapy (MNT) delivered by telehealth to patients at home.

Separately, CMS unveiled the final 2024 outpatient prospective payment system (OPPS) rule^[2] on Nov. 2 and another final rule with its remedy for 340B drug payment cuts under OPPS that were declared unlawful by the U.S. Supreme Court.^[3] According to the 340B rule, CMS will pay about 1,600 affected hospitals a lump-sum payment of \$9 billion, but also reduce outpatient base payments 0.5% annually starting in 2026.

Getting back to split/shared billing, Medicare pays for an E/M service provided jointly by a physician and NPP—such as a nurse practitioner—at an institution (e.g., hospital, skilled nursing facility). Split/shared visits are billed under the national provider identifier of the physician or NPP who provides the substantive portion. As CMS explained in the 2022 MPFS rule, “The practitioner who spends more than half of the total time, or performs the history, exam, or MDM can be considered to have performed the substantive portion and can bill for the split (or shared) E/M visit.” The 2022 MPFS rule phased out history, exam and MDM as a basis for determining the substantive portion, leaving time as the only option starting in 2023, but CMS delayed implementation until 2024, and then proposed to pause the time-only mandate again. Instead, it has embraced the revised CPT E/M guidelines.

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