CMS FINALIZES 2021 MPFS FINAL RULE – 3 KEY POLICY CHANGES IMPACTING FLEXIBILITY FOR NON-PHYSICIAN PRACTITIONERS

In early December, the Centers for Medicare & Medicaid Services ("CMS") issued its Calendar Year ("CY") 2021 Medicare Physician Fee Schedule ("MPFS") final rule ("Final Rule"). Among many other changes, CMS finalized three key payment policy updates impacting non-physician practitioners ("NPPs"), including: (1) clarification that pharmacists may provide services on an incident-to basis; (2) making permanent the ability for NPPs to supervise diagnostic tests; and (3) clarification that physicians and NPPs may review and verify (rather than re-document) notes in the medical record made by members of the medical team.

1. *Pharmacists Providing Services on Incident-To Basis*

CMS reiterated its clarification from its COVID-19 Interim Final Rule with Comment Period ("IFC"), published May 8, 2020, that pharmacists fall within the regulatory definition of "auxiliary personnel" under the "incident to" regulation at 42 C.F.R. § 410.26. Accordingly, pharmacists may provide services incident-to a physician or NPP's professional service under the appropriate level of supervision provided that: (i) the criteria at § 410.26 is met which require in part, the services provided in a noninstitutional setting, be an integral part of the physician services, and under the required level of supervision; and (ii) payment is not made under the Medicare Part D benefit. Note, this is not a regulatory change on the part of CMS, but rather a clarification of the current regulatory requirements.

While pharmacists may provide services on an "incident-to" basis, CMS clarified there is no statutory benefit to allow pharmacists to enroll, bill and receive direct payment under the MPFS.

2. *NPP Supervision of Diagnostic Tests*

Prior to the COVID-19 public health emergency, physicians and certain NPPs could order diagnostic tests when they used the results of the tests to manage the beneficiary's specific medical problem and, in some cases, perform the tests without physician supervision. However, only physicians were generally permitted to supervise diagnostic tests. In the May 8th COVID-19 IFC, CMS permitted (on an interim basis) PAs, NPs and certain other NPPs to supervise diagnostic tests. CMS finalized a proposal to make the relaxed supervision requirements permanent in the CY 2021 Final Rule. Notably, PAs, NPs and certain other NPPs (e.g., certified registered nurse anesthetists and certified nurse midwives) may provide this supervision only to the extent that they are authorized to do so under the scope of their practice and applicable State law. In this regard, is it important for NPPs to understand the State law and scope of practice applicable to their professional license.

Additionally, CMS finalized its proposal to include certified registered nurse anesthetists ("CRNAs") to the group of specified NPPs that are permitted to supervise the performance of diagnostic tests as permitted within their scope of practice and state law. CMS will amend the regulations at § 410.32 to enable these NPP supervision changes.

3. *Medical Record Documentation*

Finally, CMS reemphasized its position established in the CY 2020 MPFS Final Rule that any individual who is authorized under Medicare to furnish and bill for the professional services that they provide may review and verify (sign and date) the medical record for the services they bill *rather than* re-document the notes in the medical record made by physicians, residents, nurses and students or other medical team members. CMS confirmed this policy applies to individuals whether or not they are acting in a teaching role and also applies to therapists. CMS further emphasized that while any member of the medical team may enter information into the medical record, only the billing provider may review and verify notes made in the record by others for the services the billing provider furnishes and bills. This means that the billing professional must review and verify that the information in the medical record is accurate and complete.

Importantly, information entered into the medical record should demonstrate the services are reasonable and necessary. Additionally, the new medical record flexibility does not negate the teaching physician rules, split/shared visit rules or other aspects of the service provided.

THIS IS AN ADVERTISEMENT
© 2002-2024. Hall, Render, Killian, Heath & Lyman, P.C. All Rights Reserved.

PRACTICAL TAKEAWAYS

- Pharmacists may provide services incident-to a physician or NPP's professional service; however, pharmacists are still not permitted to directly bill and receive payment under Medicare Part B.
- Effective January 1, 2021, NPs, CNSs, PAs, CNMs and CRNAs may supervise the performance of diagnostic tests within their scope of practice and state law.
- Under the new medical record documentation policy, while the billing provider is no longer required to re-document notes made in the medical record by other medical team members, the medical record must always support the medical necessity for the services that were provided and the billing provider remains responsible for the accuracy of the information included on the claim.

If you have any questions or would like additional information on this topic, please contact:

- Lori Wink at (414) 721-0456 or lwink@hallrender.com;
- Regan Tankersley at (317) 977-1445 or rtankersley@hallrender.com;
- Lisa Lucido at (248) 457-7812 or llucido@hallrender.com; or
- Your primary Hall Render contact.

Special thanks to Macauley Rybar, law clerk, for his assistance with drafting this article.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside of an attorney-client relationship—answer specific questions that would be legal advice.

THIS IS AN ADVERTISEMENT
© 2002-2024. Hall, Render, Killian, Heath & Lyman, P.C. All Rights Reserved.