

CMS Finalizes Payment Policies Under the CY 2013 Medicare Physician Fee Schedule

On November 16, 2012, the Centers for Medicare & Medicaid Services (CMS) published its final rule ([77 Fed. Reg. 68891](#)) with comment period for payment policies under the Medicare Physician Fee Schedule (MPFS), and made other policy changes related to Medicare Part B payment for services furnished in the 2013 calendar year.

The final rule includes a required 26.5% across-the-board reduction to Medicare payment rates for physicians and non-physicians under the Balanced Budget Act of 1997's Sustainable Growth Rate (SGR) methodology. However, every year since 2003 Congress has overridden this reduction. According to a [Fact Sheet issued by CMS on November 1, 2012](#), "[t]he Administration is committed to fixing the SGR update methodology and ensuring these payment cuts do not take effect."

The final rule prioritizes the development and implementation of a series of initiatives designed to improve payment for, and encourage long-term investment in, primary care and care management services. Provided there is an adjustment to the SGR, the final rule imposes an increase of payments to family practitioners by approximately 7% in the 2013 calendar year. Payments to other primary care providers will also increase between 3% and 5%.

In addition, under the final rule, several specialty providers are projected to see a decrease in their payment rates, primarily as a result of potentially misvalued codes. Such specialists include independent laboratory providers (14% reduction); neurologists (7% reduction); radiation oncologists (7% reduction); pathologists (6% reduction); interventional radiologists (3% reduction); and cardiologists (2% reduction). CMS continues to identify potentially misvalued codes by examining multiple codes that have recently been established for new technologies or services, codes that are frequently billed in conjunction with furnishing a single service, and codes that have not been reviewed since the implementation of the MPFS.

The final rule also expands Medicare coverage to new telehealth services. CMS finalized its proposal to add several Healthcare Common Procedure Coding System (HCPCS) codes to the list of telehealth services for the 2013 calendar year on a Category 1 basis. Category 1 are those services that are similar to professional consultations, office visits and office psychiatry services that are currently on the list of telehealth services. The new HCPCS codes are:

- **G0396** and **G0397** – Alcohol and/or substance abuse (other than tobacco) structured assessment, brief intervention (15 to 30 minutes) and other intervention (greater than 30 minutes)
- **G0442** – Annual alcohol misuse screening (15 minutes)
- **G0443** – Brief face-to-face behavioral counseling for alcohol misuse (15 minutes)
- **G0444** – Annual screening for depression (15 minutes)
- **G0445** – High-intensity behavioral counseling to prevent sexually transmitted infections; face-to-face individual counseling, including education, skills training and guidance, on ways to change sexual behavior (30 minutes; semi-annually)
- **G0446** – Annual individual, face-to-face intensive behavioral therapy for cardiovascular disease (15 minutes)
- **G0447** – Face-to-face intensive behavioral therapy for obesity (15 minutes)

All coverage guidelines specific to the newly added services will continue to apply when these services are furnished via telehealth. Specifically, if the national coverage determination requires the service to be furnished in a primary care setting, the telehealth originating site must also qualify as a primary care setting under the terms of the national coverage determination. Similarly, if the national coverage determination requires the service to be furnished by a primary care practitioner, the distant site practitioner who furnishes the telehealth service must also qualify as a primary care practitioner under the terms of the national coverage determination.

CMS received no comments on its proposal to make a technical correction to include telehealth consultations furnished to emergency department patients in addition to hospital and skilled nursing facility inpatients. CMS is, therefore, finalizing its proposal to make the technical revision.

In addition to the payment changes discussed above, other major provisions of the final rule include:

- Establishing additional Multiple Procedure Payment Reductions (MPPR);
- Implementing regulatory changes regarding payment for the technical component of certain pathology services;
- Requiring the inclusion of specific information on claims for therapy services;
- Expanding coverage for new transitional care management services;
- Clarifying services included in the certified registered nurse anesthetists scope of benefit;
- Introducing new efforts by CMS to better align quality reporting requirements to reduce burden and complexity;
- Modifying ordering requirements for portable x-ray services;
- Updating the ambulance fee schedule;
- Updating policies regarding the physician compare website, and the electronic health record incentive program;
- Establishing two additional electronic-prescribing exemptions;
- Discussing budget neutrality for the chiropractic demonstration;
- Addressing implementation of the physician value-based payment modifier and the physician feedback reporting program;
- Establishing Medicare coverage of the Hepatitis B vaccine; and
- Updating existing standards for e-prescribing under Medicare Part D and lifting the long-term care exemption.

The final rule is effective January 1, 2013. However, the requirement for face-to-face encounters as a condition of payment for certain durable medical equipment items takes effect July 1, 2013. The comment period for the final rule will close on December 31, 2012.

Squire Sanders lawyers have significant experience in Medicare reimbursement issues as well as telemedicine matters, including compliance with telehealth privacy and security requirements. We continue to monitor the changes to the MPFS and are available to assist clients on these matters. For more information regarding how we can assist you, please contact your principal Squire Sanders lawyer or one of the lawyers listed in this publication.

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