OBER | KALER
Attorneys at Law

Payment Matters®
Update on Medicare and Medicaid Payment Issues

Subscribe | Payment Group | Payment Matters Archive

November 9, 2011

www.ober.com

IN THIS ISSUE

CMS's New Application of an Old Policy: The Three-Day Payment Window and Wholly-Operated Physician Practices

CMS Provides Further Adjustments to Hospital Outpatient Supervision Rules

CMS Releases Calendar Year 2012 Physician Fee Schedule Final Rule with Comment Period

Calendar Year 2012 Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Final Rule Released by CMS

Editors: Leslie Demaree Goldsmith and Carel T. Hedlund

CMS Releases Calendar Year 2012 Physician Fee Schedule Final Rule with Comment Period

By: Mark A. Stanley

This article was previously published as an email alert by the AHLA Physician Organizations Practice Group on November 4, 2011.

CMS has released its Calendar Year (CY) 2012 Final Rule with Comment Period for practitioners who are paid under the Physician Fee Schedule (PFS). The final rule impacts a variety of methodologies used to calculate physician payment, including the adjustment for geographic differences in practice expenses and the payment rates for the professional component of multiple advanced diagnostic imaging procedures. The final rule may be viewed here [PDF].

CMS anticipates that, without changes to current law, the Sustainable Growth Rate (SGR) adjustment to physician reimbursement will result in a 27.4 percent cut in payment rates for 2012. This adjustment has historically been reversed through congressional intervention. However, in light of the ongoing impasse over budget cuts required by this summer's debt ceiling debate, the possibility looms that no legislative fix will be forthcoming. As a result, there is a very real possibility that a substantial reduction in physician reimbursement will occur with the CY 2012 PFS.

Among other changes, the final rule:

- **Expands the potentially misvalued code initiative.** Section 3134(a) of the Affordable Care Act (ACA) mandates that CMS identify, and adjust payment for, potentially misvalued codes. Beginning in CY 2012, the rule consolidates existing five year reviews of the work and practice expense relative value units (RVUs) into the annual review of potentially misvalued codes established pursuant to the

Payment Matters® is not to be construed as legal or financial advice, and the review of this information does not create an attorney-client relationship.

Copyright© 2011, Ober, Kaler, Grimes & Shriver

ACA. Section 3134(a) of the ACA also requires CMS to establish a methodology that utilizes consistent criteria for identifying potentially misvalued codes. In its CY 2011 PFS final rule with comment period, CMS requested input from stakeholders regarding the features of such a methodology. CMS requested input regarding the data sources and possible methodologies for developing a validation process for reviewing code values in the CY 2012 PFS proposed rule. In the final rule, CMS again declined to establish a validation process, and anticipates that any validation process will be proposed, subject to public comment, in a future rule. Finally, CMS adopted its proposed public nomination process for the identification of potentially misvalued codes for annual review, including the requirement that those proposing misvalued codes must submit supporting documentation.

- **Changes the methodology and data applied when determining the adjustment of geographic practice cost indices (GPCIs).** The new methodology maintains the current data sources for the physician work costs. However, physician work GPCIs will be adjusted to account for the expiration of the 1.0 work GPCI floor on December 31, 2011. The GPCI floors established for Alaska (1.5) and frontier states (1.0) survive the expiration of the GPCI floor later this year. CMS is replacing certain data sources used to establish practice expenses. For instance, the rule replaces HUD rental data, which is currently used as a proxy for the office rent component of practice expenses, in favor of data from the American Community Survey.
- **Applies the multiple procedure payment reduction (MPPR) to include the professional component of advanced imaging services.** Prior to CY 2011, CMS only applied the MPPR to multiple codes within the same family and only reduced the technical component of advanced imaging services. The CY 2011 PFS final rule with comment period expanded the MPPR to apply to the technical component of advanced imaging services across (rather than within) families of codes. The CY 2012 rule takes the change one step further by reducing reimbursement for the professional component of advanced diagnostic imaging services when multiple procedures are furnished in the same session.

Payment Matters® is not to be construed as legal or financial advice, and the review of this information does not create an attorney-client relationship.

Copyright© 2011, Ober, Kaler, Grimes & Shriver

- **Reduces physician payment for physician practices that are wholly owned or operated by a hospital where a hospital admission occurs within three days of a physician service.** The final rule establishes a modifier, PD, to identify the affected claims. For codes with a technical component (TC)/professional component (PC) split, the physician will be paid only the professional component. For codes that have no TC/PC split, only the facility rate will be paid. Special rules apply to surgical services. In light of commenters' concerns regarding the logistics of implementing the proposed changes, CMS has delayed implementation of the changes until July 1, 2012. See CMS's New Application of an Old Policy: The Three-Day Payment Window and Wholly-Operated Physician Practices.
- **Creates new criteria for the health risk assessments (HRAs), which are to be utilized in tandem with the annual wellness visits.** The HRAs are a required component of patients' "personalized prevention plans," as established by the Medicare statute. The Centers for Disease Control and Prevention (CDC) have issued interim guidance for the HRAs, which may be viewed here: /www.cms.gov/coveragegeninfo/downloads/healthriskassessmentsCDCfinal.pdf.
- **Expands the list of services eligible for coverage as telehealth services.** The rule adds smoking cessation treatments to the list of services eligible for telehealth coverage and adjusts the way additional services are added to the list of telehealth-eligible services.
- **Updates physician incentive programs, including the Physician Quality Reporting System (PQRS) and the ePrescribing (eRx) Incentive Program.** The rule establishes a self-nomination process for group practices that seek to participate in the PQRS or eRx Incentive Programs. Group practices that wish to self-nominate would need to do so by January 31 of the year in which they wish to participate in the Incentive Program. Groups that have previously participated are automatically eligible for participation in CY 2012 and in future years.
- **Updates the Electronic Health Records (EHR) Incentive Program.** The rule establishes a pilot program, which allows physicians to meet the clinical quality measure (CQM) reporting requirements of the EHR Incentive Program via electronic submission. CMS has established two alternate methods for

Payment Matters® is not to be construed as legal or financial advice, and the review of this information does not create an attorney-client relationship.

Copyright© 2011, Ober, Kaler, Grimes & Shriver

participants in the pilot program to submit their CQMs. The methods for electronic submission of CQM data are based on existing platforms of the PQRS.

- **Establishes new quality and cost measures that will ultimately lead to the establishment of a value-based modifier to physician payments.** CMS will establish the value-based modifier in CY 2013, using quality measures from the PQRS reports and Physician Feedback reports this year.
- **Continues the transition to the new practice expense relative value units, which began transitioning to data from the Physician Practice Information Survey (PPIS) with the CY 2010 PFS final rule.**

***Payment Matters*® is not to be construed as legal or financial advice, and the review of this information does not create an attorney-client relationship.**

Copyright© 2011, Ober, Kaler, Grimes & Shriver