HEALTHCARE REGULATORY ROUND-UP - Episode #31

2023 Medicare Physician Fee Schedule Proposed Rule: Part II

August 3, 2022

Agenda

1. Evaluation and Management (E/M) Services
2. Split/Shared Visits
3. Practice Expense Calculations
4. Behavioral Health
5. Request for Information (RFI)
    1. Global Surgical Package Valuation
    2. Dental and Oral Health Services
6. Resources

Introductions

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1. Evaluation and Management (E/M) Services

E/M Overview

1. CMS adopting CPT policy
2. CMS clarification
   - Exception
   - New vs. established policy
3. Valuation

E/M Services – Office and Other Outpatient

CMS Adopts CPT Policy	CMS Policy	CMS Valuation
• Adopted 2021 Guidelines in 2021 Final Rule	• **See:** *Medicare Claims Processing Manual and Medicare Benefit Policy Manual* • **See:** *Medicare Administrative Contractor E/M guidance*	• Significant increase in work RVUs during transition which impacted the entire fee schedule. • This shift is still being felt in 2023 due to delays in the adjustments due to COVID.

E/M Services – 2023 General

CMS Adopts CPT Policy	CMS Policy	CMS Valuation
• Adopting new CPT guideline for E/M coding: • "…a continuous service that spans the transition of two calendar dates is a single service and it reported on one date, which is the date the encounter begins. If the service is continuous before and through midnight, all the time may be applied to the reported date of the service." • Definition of initial service for CPT includes subspecialty.	• CMS does not acknowledge subspecialties, so initial service should be limited to different specialties.	• wRVU adjustments on Other E/M codes range from -48% (99281) to +32% (99316, 99231) • Considering the -4.4% adjustment to the CF, overall impact estimated to range from -4% for Interventional Radiology to 5% for Infectious Disease

E/M Services – Hospital Inpatient

CMS Adopts CPT Policy	CMS Policy	CMS Valuation

• CMS proposes to adopt the 2023 E/M guidelines to include:
  • New descriptor times
  • Medical decision making (MDM)
  • Certain time guidelines
  • Choice of MDM or time in the level selection
  • Elimination of history and exam requirements
• CPT revised the inpatient visit codes to include observation services:
  • Allows for the billing of an outpatient E/M and an inpatient/observation service on the same date
	• Bundling an outpatient E/M into inpatient E/M on same date:
	  • CMS will allow the obs/inpatient to be billed on the following day, even if less than 24 hours from the office visit
	• Swing beds, hospital or nursing facility, are billed based on place of service.
	• A transition from observation status to inpatient status does not constitute a new stay.
	• Only the provider responsible for discharge can bill a discharge code 99238-99239, others should bill subsequent hospital visit codes 99231-99233.
		99221 Initial hospital care -15%
		99222 Initial hospital care 0%
		99223 Initial hospital care -9%
		99231 Subsequent hospital care 32%
		99232 Subsequent hospital care 14%
		99233 Subsequent hospital care 20%
		No change
		Negative adjustment
		Positive adjustment

E/M Services – Observation

CMS Adopts CPT Policy	CMS Policy	CMS Valuation

• CMS proposes to adopt the 2023 E/M guidelines to include:
  • New descriptor times
  • MDM
  • Certain time guidelines
  • Choice of MDM or time in the level selection
  • Elimination of history and exam requirements
• CPT deleted observation section and included it in the inpatient visit section:
  • Allows for the billing of an outpatient E/M and an inpatient/observation service on the same date
	• Bundling an outpatient E/M into observation E/M on same date:
	  • CMS will allow the obs/inpatient to be billed on the following day even if less than 24 hours from the office visit
	• CMS will maintain the 8 – 24-hour rule for observation care:
	  • **< 8 hours:** Initial hospital service 99221-99223
	  • **8 – 24 hours:** Same day admission and discharge 99234-99236
	  • **24 hours+:** Initial hospital for date of admission 99221-99223, and hospital discharge 99238-99239 on subsequent date
		• wRVU values of initial and observation codes were fairly similar depending on the code.
		• Now, overall, the valuation is lower for the initial level 1 and 3 codes, but effectively the same for level 2 (99222).
		• However, there is a 14-32% increase in wRVU value for the subsequent codes when compared to prior year, similar to the adjustment for inpatient.

E/M Services – Emergency Department (ED)

CMS Adopts CPT Policy	CMS Policy	CMS Valuation

• CMS proposes to adopt the 2023 E/M guidelines to include:
  • New descriptor times
  • MDM
  • Certain time guidelines
  • Choice of MDM or time in the level selection
  • Elimination of history and exam requirements
• Will continue to allow ED and CC to be billed on same day
• ED visits do not have a reported time, so will be coded on MDM only:
  • 99281 Nurse visit in the ED
  • 99282 Straightforward
  • 99283 Low
	• Clarifies that documentation must indicate that the ED service was provided before the critical care service
	• If ED physician requests patient's physician to come in and determine if the patient should be admitted, the patient's physician should report initial hospital care visit if placing in observation or admitting to inpatient.
	  • ED physician bills ED code
	• Not dropping policy on same-day critical care and ED visits
		• CMS did not agree to reduced value of 99284, so:
		  • Maintaining values for 99282-99284, but reducing 99281
		  • Now a nurse visit code: .48 to .25

E/M Services – Skilled Nursing Facility (SNF)/Nursing Facility (NF)

CMS Adopts CPT Policy	CMS Policy	CMS Valuation

• CMS proposes to adopt the 2023 E/M guidelines to include:
  • New descriptor times
  • MDM
  • Certain time guidelines
  • Choice of MDM or time in the level selection
  • Elimination of history and exam requirements
• NPP may perform and bill an initial or subsequent NF service prior to the federally mandated initial NF comprehensive assessment by the admitting physician
• Patient admitted to SNF and initial NF assessment performed and then transferred to NF, not a new patient stay, so not appropriate to assign an initial NF visit code after the transition
	• An office visit or ED visit on the same day as NF initial assessment cannot be billed together.
	• Swing beds, hospital or NF, are billed based on place of service.
	• Since CMS does not recognize subspecialties, it will not allow different subspecialists of the same group to bill initial NF visits.
		• RUC valuation for NF codes are proposed by CMS to be adopted but questioning the value of the top initial and subsequent codes per the same 45-minute descriptor
		• CMS requests comment on the impact of the AMA's planned deletion of the annual NF assessment visit code 99318
		  • Anticipated to be billed as 99309 85% of the time which is 1.92 vs the 1.71 value of the current code

E/M Services – Home or Residence

CMS Adopts CPT Policy	CMS Policy	CMS Valuation

• CMS proposes to adopt the 2023 E/M guidelines to include:
  • New descriptor times
  • MDM
  • Certain time guidelines
  • Choice of MDM or time in the level selection
  • Elimination of history and exam requirements
• Adopting deletion of domiciliary, rest home, custodial care services (99324-99328 and 99334-99337) and merging them into home or residence services codes (99341, 99342, 99344-99345, 99347-99350) – MDM and time based
• Deleted home visit code 99343 (same MDM level as 99344)
	• *No further refinements.*	

99341	Home visit new patient	-1%
99342	Home visit new patient	9%
99344	Home visit new patient	-15%
99345	Home visit new patient	-5 %
99347	Home visit established patient	-10%
99348	Home visit established patient	-4%
99349	Home visit established patient	5%
99350	Home visit established patient	10%

Negative adjustment

Positive adjustment

E/M Services – Prolonged Service

CMS Adopts CPT Policy	CMS Policy	CMS Valuation

• CPT created codes to replace deleted codes 99356 and 99357 with:
  • *993X0 Prolonged IP/Obs E/M ea 15 min*
  • *With and without direct patient contact*
• *Based on descriptor time*
	• CMS to release their own G-codes (GXXX1 – GXXX3):
	  • *GXXX1 Prolonged hospital inpatient or observation care evaluation and management service(s) beyond the total time for the primary service (when the primary service has been selected using time on the date of the primary service); each additional 15 minutes by the physician or qualified healthcare professional, with or without direct patient contact (list separately in addition to CPT codes 99223, 99233, and 99236 for hospital inpatient or observation care evaluation and management services). (Do not report GXXX1 on the same date of service as other prolonged services for evaluation and management 99358, 99359, 993X0, 99415, 99416). (Do not report GXXX1 for any time unit less than 15 minutes).*
	  • **Time based on Physician Time File, rounded to the nearest 5 minutes and not per the CPT descriptor.**
		• 993X0 = 0.81
		• GXXX1-3 = 0.61

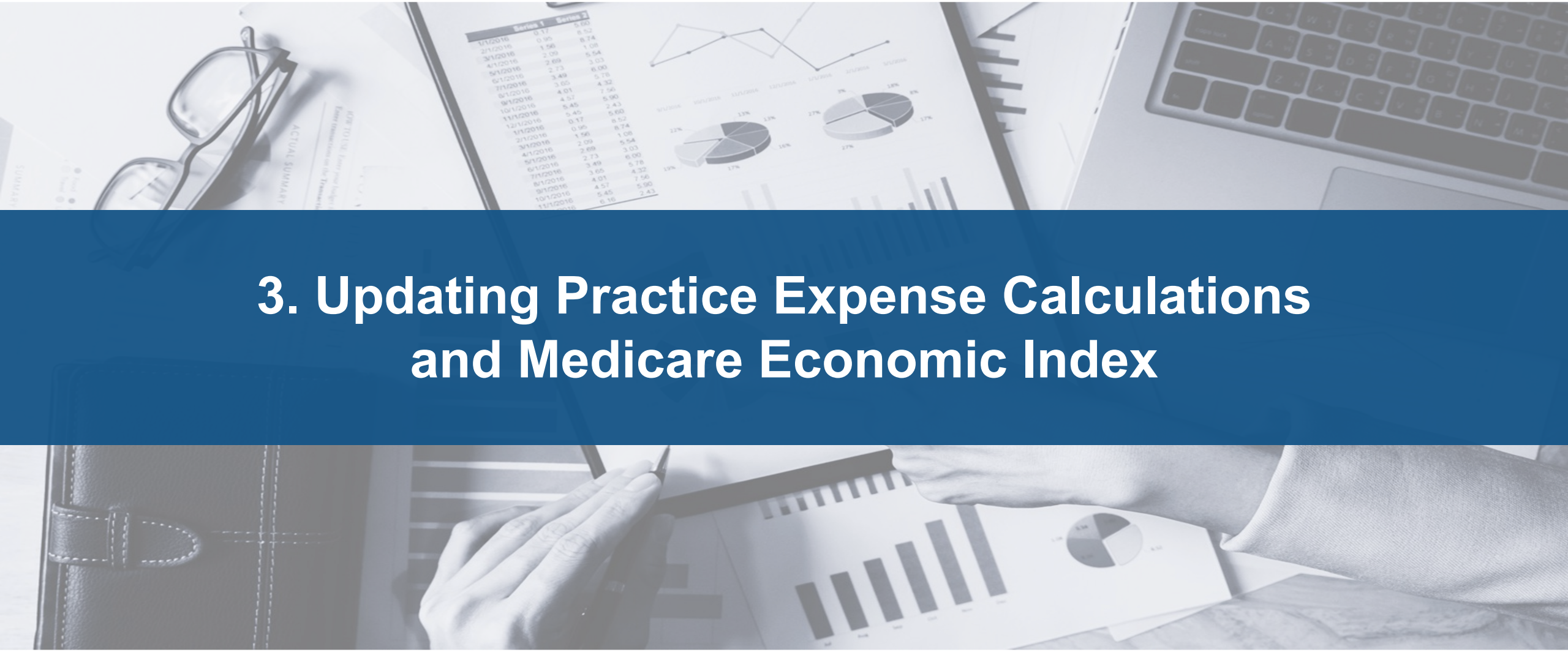
E/M Services – Critical Care

CMS Adopts CPT Policy	CMS Policy	CMS Valuation
• 2021 E/M guideline changes created the need for the 2022 revision.	• CMS revised split/shared guidelines for critical care to be time based in 2022. • While hospital time requirements for other E/M visits are delayed, these are not. • Requires 104 minutes for 99292.	• Results in up to 15% cut in Medicare revenue if APPs are now the billing provider. • Impact to leasing contracts, supervision and physician and APP compensation.

2. Split/Shared Visits

Split/Shared…Partial Delay

- CMS is proposing to delay by one year the effective date of the split/shared visits policy finalized in CY 2022 (with a few exceptions).
- For CY 2023, clinicians will continue to have a choice of history, physical exam, MDM, or more than half of the total practitioner time spent to define the substantive portion, instead of using total time to determine the substantive portion.
  - "Therefore, the proposed paragraph would specify, for visits other than critical care visits furnished in calendar year 2022 and 2023, substantive portion means **one of the three key components (history, exam or MDM)** or more than half of the total time spent by the physician and NPP performing the split (or shared) visit."
- Analyze financial impact if time-based billing was applied to hospital services and comment to CMS regarding impact in reimbursement, compensation models, collaboration and team approach, etc.
- Use critical care outcomes in 2022, if available to also communicate impact of policy.
- **Note:** Critical care changes are not delayed, and CMS corrected its error in the guidelines and reiterates that the full 30 minutes must be met to bill for the 99292 (104 minutes).



3. Updating Practice Expense Calculations and Medicare Economic Index

Practice Expense Calculations

- CMS seeks comment on:
  - Identification of the appropriate instrument, methods, and timing for updating specialty-specific PE data that foster transparency
  - Mechanisms to ensure that data collection and response sampling adequately represent physicians and non-physician practitioners across various practice ownership types, specialties, geographies, and affiliations
  - Use of statistical clustering or other methods that would facilitate a shift away from specialty-specific inputs to inputs that relate to homogenous groups of specialties without a large change in valuation relative to the current PE allocations
  - Avenues by which indirect PE can be moved for facility to non-facility payments, based on data reflecting site of service cost differences
  - Methods to adjust PE to avoid the unintended effects of undervaluing cognitive services due to low indirect PE
  - A standardized mechanism and publicly available means to track and submit structured data and supporting documentation that informs pricing of supplies or equipment
  - Sound methodological approaches to offset circularity distortions, where variable costs are higher than necessary costs for practices with higher revenue
  - The cadence, frequency, and phase-in of adjustments for each major area of prices associated with direct PE inputs (Clinical Labor, Supplies/Equipment)

Medicare Economic Index (MEI)

- CMS proposes to revise the MEI weights for certain cost components.
  - Current MEI weights are based primarily on results from the AMA's PPI survey, based on 2006 data.
  - CMS is proposing to use data from the Census Bureau's Service Annual Survey (SAS) and supplement with other sources when SAS does not provide the necessary detail.
  - Could result in substantial changes in the weights for many of components of PE.
    - Increases and decreases in non-physician compensation, professional liability insurance, etc.
  - Changes will not be implemented in 2023, due to the significant impact to physician payments.
- Public comment requested.

4. Behavioral Health

Behavioral Health Services Expansion

- CMS proposes:
  - To expand access by permitting behavioral health services to be furnished by licensed professional counselors, marriage and family therapists, and other types of practitioners under **general supervision** instead of direct supervision when these services are incident to the services of a physician or non-physician practitioner
  - To pay for behavioral health integration service personally performed by clinical psychologists (CPs) or clinical social workers (CSWs) when provided as a part of a primary care team
  - Request for feedback on best way to cover care in a community setting versus a hospital when appropriate
  - Pay for Opioid Treatment Programs in mobile units and increase payment

5. Request for Information (RFI)

RFI – Global Surgical Package Valuation

- CMS seeks stakeholder input on strategies for paying more accurately for the global surgical packages based on changes in healthcare delivery over the last several years.
- Options proposed:
  - "(1) revaluing all 10- and 90-day global packages at one time (perhaps with staggered implementation dates);
  - (2) revaluing only the 10-day global packages (because these appear to have the lowest rate of postoperative visit performance, per RAND's analysis of claims data);
  - (3) revaluing 10-day global packages and some 90-day global packages (such as those with demonstrated low postoperative visit performance rates as identified in RAND's analysis of these services); or
  - (4) relying on the Potentially Misvalued Code process to identify and revalue misvalued global packages over the course of many years."

RFI – Dental and Oral Health Services

- **Current:** CMS plans to clarify payment policies on dental services, such as those integral to treatment of a medical condition.
  - Examples:
    - Reconstruction of the jaw following accidental injury, tooth extractions done in preparation for radiation treatment for cancer involving the jaw, or oral exams preceding kidney transplantation
- **Future:** CMS seeks comment on future payment models for dental and oral health care services.
  - Including:
    - Dental exams and necessary treatments prior to organ transplants, cardiac valve replacements, and valvuloplasty procedures that may be inextricably linked to, and substantially related and integral to, the clinical success of an otherwise covered medical service
    - The potential establishment of a process to review public submissions of recommendations for identifying the circumstances when the policies may apply

Comments and RFI Deadline

Comments on the Proposed Rule (including responses to RFI) are due September 7, 2022.

6. Resources

Resources

- https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-proposed-rule
- https://www.govinfo.gov/content/pkg/FR-2022-07-29/pdf/2022-14562.pdf
- https://www.cms.gov/blog/strengthening-behavioral-health-care-people-medicare
- www.ama-assn.org/cptevaluation-management

Our Next Regulatory Round-Ups

- 2023 Medicare Physician Fee Schedule Proposed Rule, Part III – August 10
  - Quality Payment Program Update
- 2023 Hospital OPPS/ASC Proposed Rule – August 17
- 2023 Hospital IPPS, Inpatient Rehab, Inpatient Psych, and SNF Final Rules – Dates TBD

How can we HELP?

A national healthcare advisory services firm providing consulting, audit, and tax services