2024 Medicare Physician Fee Schedule Proposed Rule: Regulatory Changes and Updates to Physician Payment System

Each year, the Centers for Medicare & Medicaid Services (CMS) proposes regulations that impact the reimbursement of physicians. On July 13, 2023, CMS issued a proposed rule updating payment policies and rates for physicians paid under the Medicare Physician Fee Schedule in 2024. The proposed rule illustrates the importance of the AAN's regulatory advocacy efforts on behalf of neurologists and their patients.

CMS is projecting that the overall impact of changes contained in the proposed rule will result in a one-percent increase in payments to neurology as a specialty broadly. Due to the phase-out of temporary relief measures contained in the Consolidated Appropriations Act of 2023 and statutory budget neutrality requirements, CMS is currently predicting a reduction in the Fee Schedule conversion factor of approximately 3.4 percent. The AAN will continue to work with legislators to offset the impacts of statutorily required cuts. The AAN is committed to payment reform efforts to promote a sustainable payment system, such as ensuring physicians receive an inflationary adjustment tied to the Medical Economic Index, and to working with regulators and legislators to ensure that CMS appropriately values the work done by neurologists.

Evaluation and Management (E/M) Visits

In a significant win for AAN advocacy, CMS is proposing to delay policies impacting split (or shared) E/M visits that were set to go into effect on January 1, 2024, until January 1, 2025, to allow for further dialogue with stakeholders. The proposed rule specifically calls out concerns raised by the AAN and other aligned stakeholders that these changes pose a threat to current practice patterns of team-based care. CMS acknowledges the work that is being done currently through the CPT Editorial Panel to clarify the importance of medical decision making in identifying the billing provider.

Citing stakeholder concerns regarding the process by which values for E/M services are updated, CMS is requesting comments on how best to evaluate E/M services more regularly and comprehensively. This is in line with long-term AAN advocacy which has raised the need for consistent updates for E/M services to offset the impacts of passive devaluation of these services stemming from the Fee Schedule's budget neutrality requirements.

CMS is proposing to cover office/outpatient E/M visit complexity add on code G2211 effective January 1, 2024. The code is intended to capture the visit complexity for those patients whose overall, ongoing care is being managed and monitored by a specialist for a particular condition. The AAN is pleased with the agency's proposed coverage, however, will carefully review all the provisions including the proposal that G2211 would not be payable when the E/M visit is reported with modifier 25.

Telehealth Regulations

CMS is implementing key provisions of the Consolidated Appropriations Act (CAA) of 2023 that extend certain flexibilities in place during the COVID-19 Public Health Emergency (PHE) through December 31, 2024. These key changes include allowing telehealth services to be furnished in any geographic area and in any originating site setting, including the beneficiary's home, allowing certain services to be furnished via audio-only telecommunications systems, and continued coverage of services temporarily added to the Medicare Telehealth list through December 31, 2024. CMS is also proposing beginning in 2024 that telehealth services furnished to beneficiaries in their homes be paid at the non-facility rate to protect access to mental health and other telehealth services.

When adding certain services to the Medicare Telehealth List, CMS had previously included restrictions on how frequently a service may be furnished via telehealth. CMS is proposing to remove the telehealth frequency limitations for the following codes through 2024:

- Subsequent Inpatient Visits: CPT Codes 99231–99233
- Subsequent Nursing Facility Visits: CPT Codes 99307–99310
- Critical Care Consultation Services: HCPCS Codes G0508 and G0509

Citing concerns that modifying current policy relating to direct supervision may present a barrier to access, CMS is proposing—consistent with the AAN's advocacy—to continue to define direct supervision to permit the presence and "immediate availability" of the supervising practitioner through real-time audio and visual interactive telecommunications through December 31, 2024. CMS will continue to evaluate the appropriateness of making this policy permanent.

In alignment with the telehealth policies that were extended under the provisions of the CAA CMS is also proposing to allow teaching physicians to have a virtual presence in all teaching settings, only in clinical instances when a service is furnished virtually. This would permit teaching physicians to have a virtual presence during the key portion of the Medicare telehealth service for which payment is sought, through audio/video real-time communications technology, for all residency training locations through December 31, 2024. The virtual presence policy would continue to require real-time observation by the teaching physician and excludes audio-only technology.

CMS declined to permanently add several codes that are temporarily included on the Medicare Telehealth List, citing a need for further evidence generation. These include:

- Deep Brain Stimulation: CPT Codes 95970, 95983, and 95984
- Inpatient Hospital or Observation Care: CPT Codes 99221–99223, 99234–99236
- Inpatient Hospital Observation Discharge Day Management: CPT Codes 99238 and 989239
- Emergency Department Evaluation and Management: CPT Codes 99281–99283

Appropriate Use Criteria

Since 2014, CMS has been working to implement a program that requires practitioners to consult a qualified clinical decision support mechanism at the time the practitioner orders an advanced diagnostic imaging service for a Medicare beneficiary. The AAN has repeatedly expressed concerns about the feasibility of this program, the subsequent increase in administrative burden, and the unintended consequences it would have on practice patterns. CMS has continually delayed implementation of the penalty phase of this program and, in a significant win for AAN advocacy, CMS has now proposed to suspend the program indefinitely to allow for reevaluation.

Medicare Economic Index

CMS had previously finalized a policy to update the Medicare Economic Index (MEI) to reflect more current market conditions faced by physicians in furnishing physicians' services. Although the agency finalized this policy, CMS chose to delay implementation, citing a need for further comment. Based on stakeholder feedback, CMS is proposing to not incorporate the updated MEI methodology for PFS rate-setting in 2024. CMS will continue to solicit feedback on how to update this index, including data collected through a forthcoming American Medical Association-led effort.

Changes to Payment for Drugs and Biologics Under Part B

The proposed rule makes a variety of updates to regulatory text to reflect provisions of the Inflation Reduction Act. Language is being added to codify the Medicare payment methodology for drugs and biologics that do not yet have adequate data to determine an Average Sales Price (ASP). These interim payment amounts are determined based on the Wholesale Acquisition Cost instead. In the case of biosimilars, the reference biologic's ASP is used as well. This section also codifies a $35 out-of-pocket cap for insulin.

CMS also seeks comment on coding and payment policies for complex non-chemotherapeutic drugs, in an effort to promote coding and payment consistency and patient access to infusion services.

Quality Payment Program

MIPS

CMS proposes that for the 2024 performance period, the weights for MIPS performance categories remain the same as 2023: 30 percent for Quality, 30 percent for Cost, 15 percent for Improvement Activities, and 25 percent for Promoting Interoperability. CMS also proposes to modify its methodology for determining the MIPS payment adjustment performance threshold to include three previous performance periods. Based on this methodology, CMS is proposing a performance threshold of 82 points for the Calendar Year 2024 performance period.

Neurology will not see major modifications to the Quality, Cost, and Improvement Activity categories. CMS has proposed policy modifications to the Promoting Interoperability category aimed at alleviating administrative burden. The proposed revisions would:

1. Lengthen the performance period for this category from 90 days to 180 days
2. Modify one of the exclusions for the Query of Prescription Drug Monitoring Program (PDMP) measure

3 Provide a technical update to the e-Prescribing measure's description to ensure it clearly reflects our previously finalized policy
4 Modify the Safety Assurance Factors for Electronic Health Record Resilience (SAFER) Guide measure to require MIPS eligible clinicians to affirmatively attest to completion of the self-assessment of their implementation of safety practices
5 Continue to reweight this performance category at zero percent for clinical social workers for the CY 2024 performance period/2026 MIPS payment year

MIPS Value Pathways

Five new MIPS Value Pathways (MVPs) are being proposed in the rule including:

- Women's Health
- Infectious Disease, Including Hepatitis C and HIV
- Mental Health and Substance Use Disorder
- Quality Care for Ear, Nose, and Throat (ENT)
- Rehabilitative Support for Musculoskeletal Care

The AAN will continue to engage with CMS during the comment period to provide feedback on how the relevant policies and performance standards best reflect the quality of care provided by our members. CMS has already implemented three models which focus on neurologic conditions.

- Optimal Care for Patients with Episodic Neurological Conditions
- Supportive Care for Neurodegenerative Conditions MVP
- Coordinating Stroke Care to Promote Prevention and Cultivate Positive Outcomes MVP

Access AAN resources to help you understand MVPs and the Quality Payment Program.