



201 Chicago Avenue  
Minneapolis, Minnesota 55415

Tel: (612) 928-6100  
Fax: (612) 454-2744

*AAN.com*

**President**

Orly Avitzur, MD, MBA, FAAN  
*Tarrytown, New York*

**President Elect**

Carlayne E. Jackson, MD, FAAN  
*San Antonio, Texas*

**Vice President**

Janis M. Miyasaki, MD, MEd, FRCPC, FAAN  
*Edmonton, Alberta, Canada*

**Secretary**

Sarah M. Benish, MD, FAAN  
*Minneapolis, Minnesota*

**Treasurer**

Charles C. Flippen II, MD, FAAN  
*Los Angeles, California*

**Immediate Past President**

James C. Stevens, MD, FAAN  
*Fort Wayne, Indiana*

**Directors**

Wayne E. Anderson, DO, FAHS, FAAN  
*San Francisco, California*

Brenda Banwell, MD, FAAN  
*Philadelphia, Pennsylvania*

Bruce H. Cohen, MD, FAAN  
*Chair, Advocacy Committee  
Akron, Ohio*

Charlene E. Gamaldo, MD, FAASM, FAAN  
*Baltimore, Maryland*

James N. Goldenberg, MD, FAAN  
*Lake Worth, Florida*

Larry B. Goldstein, MD, FAHA, FAAN  
*Lexington, Kentucky*

Lily Jung Henson, MD, MMM, FAAN  
*Stockbridge, Georgia*

Shannon M. Kilgore, MD, FAAN  
*Palo Alto, California*

Brett M. Kissela, MD, MS, FAHA, FAAN  
*Cincinnati, Ohio*

Brad C. Klein, MD, MBA, FAAN  
*Chair, Medical Economics  
and Practice Committee  
Willow Grove, Pennsylvania*

José G. Merino, MD, MPhil, FAHA, FAAN  
*Editor-in-Chief, Neurology®  
Washington, DC*

Bruce Ovbiagele, MD, MSc, MAS,  
MBA, FAAN  
*San Francisco, California*

Maisha T. Robinson, MD, MSHPM, FAAN  
*Chair, Member Engagement Committee  
Jacksonville, Florida*

**Non-voting Board Member**

Mary E. Post, MBA, CAE  
*Chief Executive Officer  
Minneapolis, Minnesota*

April 4, 2022

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 445-G  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Administrator Brooks-LaSure,

The American Academy of Neurology (AAN) is the world's largest neurology specialty society representing more than 38,000 neurologists and clinical neuroscience professionals. The AAN is dedicated to promoting the highest quality patient-centered neurologic care. A neurologist is a physician with specialized training in diagnosing, treating, and managing disorders of the brain and nervous system. These disorders affect one in six people and include conditions such as multiple sclerosis (MS), Alzheimer's disease, Parkinson's disease, stroke, migraine, epilepsy, traumatic brain injury, ALS, and spinal muscular atrophy.

Our members, including more than 1,900 non-physician practitioners (NPPs), practice as part of physician-led care teams. To ensure timely access to high-quality care, many elements of a patient visit are performed by NPP members of the care team rather than the physician. The AAN concurs with CMS that, given recent updates to policies relating to evaluation and management (E/M) billing, as well as the rapidly changing medical workforce, alterations must be made to keep up with new models of care delivery as well as the collaborative role that NPPs play in neurologic care.

However, the AAN is concerned with changes finalized in the 2022 Medicare Physician Fee Schedule (MPFS), redefining the "substantive portion" of a split (or shared) visit starting in 2023. This change would amend the definition of "substantive portion" for the purposes of determining who may bill for a split (or shared) visit to mean "more than half of the total time spent by the physician and NPP performing the split (or shared) visit."

The AAN believes this new definition is misaligned with changes that have already been implemented for outpatient E/M services and changes that are expected to be implemented in 2023 for inpatient E/M services. Allowing practitioners to select visit level based on either time or medical decision

making (MDM) is a critical element of the new policies governing billing for E/M services. The AAN believes that establishing a different paradigm for determining which practitioner may bill for split (or shared) E/M visits will be overly burdensome and confusing for practitioners. Additionally, prohibiting the determination of substantive portion by any method other than the majority of total time spent performing the visit does not reflect the practice patterns of physician-led care teams.

In the 2022 MPFS, CMS acknowledged the disruption that this change will create and so, for CY 2022, allowed for the substantive portion of a visit to be determined by the performance of the history of present illness (HPI), physical exam, and/or medical decision-making (MDM). Since the 2022 inpatient E/M level of service is determined by the 1995 or 1997 E/M guidelines, this was a reasonable interim policy. However, we anticipate that starting in 2023, practitioners will select visit level for inpatient E/M encounters based on either time or MDM. The AAN believes that either time or MDM should be used to determine visit level, as well as the substantive portion for split (or shared) visits to maintain consistency in coding policies. In cases in which the NPP's MDM determines the level of care that the patient receives during a split (or shared) visit, it would be appropriate for the NPP to bill for that visit. On the other hand, in cases in which the physician performs the cognitive work that determines the level of care delivered to the patient, the physician should be allowed to bill for the visit regardless of which practitioner performed more than half of the total time of the visit.

In the 2022 MPFS final rule, CMS justified its decision only to allow the practitioner responsible for more than half of the total time of the visit to bill for the visit, by stating “no key or critical portion of MDM is identified by CPT. Therefore, we do not see how MDM (or its critical portion, or other component part) can be attributed to only one of the practitioners.” The AAN believes that the simplest way to resolve this issue is through coordinated attestations from both the physician and the NPP as to who provided the MDM. For example, if the NPP and physician both attest that the physician determined MDM, that visit would be attributed to the physician. We believe that this is the appropriate way to determine which practitioner performed the MDM in split (or shared) visits and that it reflects the critical role MDM plays in patient care. We urge the agency to implement this policy in the forthcoming 2023 MPFS permanently.

CMS has a long history of auditing E/M services by examining the elements of documentation in the medical record that support appropriate billing. Given that written attestation by physicians has been accepted by CMS in the past, there would not be a need for any new auditing process. We see no reason why CMS would be unable to continue to use these same program integrity levers to audit split (or shared) visits billed on the basis of medical decision-making.

We strongly urge CMS not to disrupt team-based care in facility settings and to revise the split (or shared) visit policy to allow the physician or NPP who is doing the cognitive work that drives the patient's care to bill for the service. The AAN believes that it is appropriate to select the billing practitioner based on either time or MDM and that doing so would be consistent with recent changes to E/M billing. The AAN appreciates your careful consideration of these issues and is happy to provide any additional information you may

need in considering how best to promote team-based care as well as accurate coding and billing. If you have any questions regarding these comments or seek further input, please contact Matt Kerschner, Director, Regulatory Affairs at [mkerschner@aan.com](mailto:mkerschner@aan.com) or Max Linder, Government Relations Manager at [mlinder@aan.com](mailto:mlinder@aan.com).

Sincerely,

A handwritten signature in black ink that reads "Orly Avitzur MD". The signature is written in a cursive style with a large initial "O" and "A".

Orly Avitzur, MD, MBA, FAAN  
President, American Academy of Neurology