CMS Proposes to Establish Separate Payment for End of Life Planning Services

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On July 8, 2015, the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule that updates payment rates and related reimbursement and quality policies for physician services furnished under the Medicare Physician Fee Schedule (PFS) for calendar year 2016. Included in the proposed rule is a provision that, if finalized, would establish separate payment for advance care planning services provided to Medicare beneficiaries by physicians and certain other practitioners.

Advance care planning includes conversations between patients and their practitioners, both before an illness progresses and during the course of treatment, to decide on the preferred type of care and options as the end of life nears. The conversations can include the institution of an advanced directive or living will, the election of hospice care, and/or the pursuit of alternative treatments. With such advance care planning, Medicare beneficiaries should experience more control over the type of care received at the end of life.

While end of life planning is not, by itself, a particularly new idea, the notion of Medicare reimbursement for planning services is somewhat controversial. End of life planning services were included in early versions of the legislation that ultimately become the Affordable Care Act, but were stripped after Sarah Palin and others alleged that payment for end of life planning would result in "death panels" restricting beneficiaries' treatment options.

Since the early "death panel" fears, both the American Medical Association and members of Congress (through a number of proposed legislative efforts) have lobbied for separate payment for end of life conversations as a way to empower patients. Medicare legislation and policy currently provides coverage for advance care planning under the "Welcome to Medicare" visit available to all Medicare beneficiaries. However, most beneficiaries do not need end of life planning services when they first enroll in Medicare. The new codes would allow for end of life planning services to be elected at any point, and to be provided separately from any other service.

CMS proposed two CPT codes for purposes of billing for end of life services. CPT code 99497 covers thirty minutes of face-to-face advance care planning, including the explanation and discussion of advance directives such as standard forms, and, if elected by the patient, assistance with completion of those forms, by the physician or other qualified health professional. If the advance planning encounter lasts beyond thirty minutes, then add-on CPT code 99498 is available for each additional thirty minute period. These codes may be billed separately and standing alone, or in addition to any other service rendered that day. When describing the use of the codes, CMS provided the following example:

> this could occur in conjunction with the management or treatment of a patient's current condition, such as a 68 year old male with heart failure and diabetes on multiple medications seen by his physician for the evaluation and management of these two diseases, including adjusting medications as appropriate. In addition to discussing the patient's short-term treatment options, the patient expresses interest in discussing long-term treatment options and planning, such as the possibility of a heart transplant if his congestive heart failure worsens and advance care planning including the patient's desire for care and treatment if he suffers a health event that adversely affects his decision-making capacity.

CMS has considered these codes before, including for calendar year 2015. However, if the proposal is finalized, then January 1, 2016 will mark the first time that CMS has given the codes an “active” status. Note that CMS is expressly not issuing a national coverage determination, and will allow contractors to issue coverage decisions at the regional level.

CMS is accepting public comments on this proposal until September 8, 2015.

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