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CLIENT ADVISORY

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CMS Finalizes Proposal to Expand Payment for Advance Care Planning Under Medicare

On November 16, 2015, the Centers for Medicare & Medicaid Services ("CMS") published the Revisions to Payment Policies Under the Physician Fee Schedule for CY 2016 ("Final Rule"), which finalized a proposal to expand reimbursement for advance care planning ("ACP") services provided to Medicare beneficiaries. Medicare previously limited coverage for advance care planning to a beneficiary's initial "Welcome to Medicare" visit. The Final Rule expands coverage by establishing separate payment and payment rates for standalone ACP services provided by physicians and other practitioners.

I. Overview of ACP Benefit

Beginning on January 1, 2016, CMS will reimburse physicians and other qualified health professionals for standalone ACP services provided pursuant to CPT codes 99497 and 99498. Code 99497 provides separate payment for an initial 30-minute face-to-face explanation and discussion of end-of-life preferences, and code 99498 provides payment for each successive 30-minute increment. CMS clarified that ACP services are completely voluntary, and beneficiaries may decline to receive them. Once a beneficiary elects to receive ACP services, practitioners are encouraged to notify the beneficiary that Part B cost sharing may apply. Importantly, Part B cost sharing will not apply to ACP services provided as part of the beneficiary's annual wellness visit. ACP services are a voluntary, separately payable element of the annual wellness visit, and when they are provided as part of the same visit with the same date of service, ACP codes will be separately reimbursed with no Part B coinsurance or deductible.

II. Medicare Billing Requirements

CMS did not place utilization limits on ACP services, instead noting that the time increments in the CPT coding guidance are sufficient to avoid overutilization or abuse. The CPT guidance indicates that codes 99497 and 99498 may be billed on the same day or different day as other E/M services and during the same service period as transitional care management and chronic care management services and within global surgical periods. The CPT guidance is intended to promote flexibility in the timing and duration of ACP conversations based on the unique circumstances facing beneficiaries. Contrary to many commenters' suggestions, CMS chose to allow time for implementation and experience with ACP services before considering a controlling national coverage policy. Consequently, coverage for ACP services will remain subject to any additional local coverage requirements imposed by contractors.

Both physicians and non-physician practitioners ("NPPs") are permitted to bill for ACP services. NPPs must be authorized to independently bill Medicare for services, and their scope of practice and Medicare benefit category must include ACP services. As a physician's service, the "incident to" rules apply when ACP services are furnished incident to the services of the billing practitioner, including the requirement of direct supervision. CMS expects the billing physician or NPP to "manage, participate and meaningfully contribute to the provision of the services, in addition to providing a minimum of direct supervision." ACP services are appropriately provided by physicians or using a team-based approach that involves NPPs and other staff under the order and medical management of the beneficiary's treating physician or NPP.

ACP services are separately payable to the billing physician or NPP in both facility and non-facility settings and are not limited to particular physician specialties. In addition, ACP services will be a standalone billable visit in a rural health clinic ("RHC") or federally-qualified health center ("FQHC") when furnished by a RHC or FQHC practitioner and all other program requirements are satisfied. If furnished on the same day as another billable visit, only one visit will be paid. Coinsurance will be applied for ACP services when furnished in an FQHC, and coinsurance and deductibles will be applied for ACP services when furnished in an RHC. As in other settings, coinsurance and deductibles will be waived when ACP services are provided as part of an annual wellness visit.

CMS will continue to evaluate whether additional standards, special training, or quality measures may be appropriate in the future as a condition of Medicare payment for ACP services. Notably, the services were not added to the list of Medicare telehealth services, so the face-to-face services described in the CPT guidance must be furnished in-person to be paid by Medicare.

III. Key Takeaways

Expanding Medicare reimbursement for ACP services is the product of a sustained effort by advocacy organizations, clinicians, and political leaders to promote end-of-life care planning at any age or condition of health. By establishing separate payment for ACP services, CMS is furthering its goals of delivering patient-centered care that is consistent with the wishes of Medicare beneficiaries at all stages of their lives. The Final Rule emphasizes that advance care planning takes place at the discretion of the beneficiary, allaying concerns of improper government influence over end-of-life decision-making, which were heightened when a similar provision was included in a draft version of the Patient Protection and Affordable Care Act.

Dr. Patrick Conway, chief medical officer at CMS, indicated that the agency "received overwhelmingly positive comments about the importance of these conversations between physicians and patients" and further noted that "[w]e know that many patients and families want to have these discussions." The change was hailed by the American Medical Association, the American Hospital Association, the National Hospice and Palliative Care Organization, and numerous other advocacy groups as a major step forward for patient care.

For more information about Medicare reimbursement for ACP services, please contact Mary Malone or Corbin Santo by phone at (866) 967-9604, or by email at mmalone@hdjn.com or csanto@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.