On November 2, 2021, the Centers for Medicare & Medicaid Services (CMS) issued the calendar year (CY) 2022 Medicare Physician Fee Schedule (MPFS) final rule which, among other policy and regulatory changes, finalized regulations codifying CMS requirements for billing for “split (or shared)” evaluation and management (E/M) visits under the MPFS. Split (or shared) visits are E/M visits provided in part by both physician and non-physician practitioners (NPPs) and are now defined at 42 CFR § 415.140. NPPs generally include nurse practitioners, physician assistants and clinical nurse specialists, and are also known outside of the Medicare program by other names, such as advanced practice practitioners. The finalized regulations generally reflect prior CMS guidance for billing “split/shared” visits, but also incorporate changes from the historical guidance that introduce new opportunities.
and restrictions on providing what are now known as split (or shared) visits.

IN-DEPTH

BACKGROUND

Medicare reimburses services paid under the MPFS and furnished by NPPs at 85% of the rate paid when a physician furnishes the same service. Under CMS regulations, when a patient visit is performed in part by a physician and in part by a NPP in a physician office setting, the physician is permitted to bill for the visit under their own NPI and receive the higher Medicare payment rate. These services are considered to be services furnished “incident to” a physician’s professional services and must meet other Medicare requirements for “incident to” services. CMS regulations have not historically addressed services furnished in part by a physician and in part by an NPP in the facility setting (e.g., hospitals and skilled nursing facilities (SNFs)). Instead, CMS relied solely on guidance found in the Medicare Claims Processing Manual (MCPM) to establish requirements for coverage and payment of such services. In May 2021, in response to a petition submitted under the US Department of Health and Human Services’ Good Guidance Practices Regulation, CMS withdrew the MCPM sections specifically addressing split (or shared) visits and indicated that CMS would reissue the guidance as proposed regulations.

For dates of service on or after January 1, 2022, the new finalized regulations specify the requirements that must be met in order for a physician or NPP to bill a split (or shared) visit in a hospital, SNF or another facility setting. The final rule expands the clinical scenarios under which a healthcare professional can bill for services performed in part by another practitioner but also imposes restrictions on which performing practitioners can bill for the split (or shared) visit. While the finalized regulations provide the circumstances under which a physician or NPP may bill for professional services furnished to patients in a facility setting, this regulation addresses only services furnished in the facility setting and paid under MPFS. It does not appear to apply to facility services payable under a separate payment system (i.e., for hospitals, under the outpatient prospective payment system, or for SNFs, under the SNF prospective payment system).

ANALYSIS

In addition to clarifying when split (or shared) visits may be billed to Medicare, the finalized regulations modify CMS’s policy and permit physicians and NPPs to bill for split (or shared) visits for both new and established patients, critical care services and certain E/M visits in a SNF. In issuing the new rules, CMS indicated that prior guidance had been interpreted as limiting split (or shared) visit billing to established patients and prohibited billing for split (or shared) visits involving critical care services or in SNFs. The new regulations also define “split (or shared) visit” as E/M visits performed in part by a physician and NPP in institutional settings for which “incident to” payment is not available. This definition is intended to distinguish between the policy applicable to services furnished “incident to” the professional services of a physician in a physician office setting and the policy
applicable to services furnished in a facility setting.

In the final rule, CMS established which of the physician or NPP performing a split (or shared) visit can bill Medicare for the visit. This is an important concept because the visit is paid at a higher rate if the physician submits the claim rather than the NPP. Historically, in determining whether a physician or an NPP may bill for a split (or shared) visit, either the physician or the NPP could bill for the service as long as the billing practitioner performed a “substantive portion” of the visit. In the final rule, CMS codified its policy as proposed and, effective January 1, 2023, will utilize time as the key factor in determining whether the physician or the NPP performed the substantive portion of the visit. CMS finalized its proposal to limit the billing practitioner to the individual who performed more than 50% of the visit. In response to concerns raised from commenters, CMS provided a one-year transitional period that will permit either time or the provision of one of three key components of the visit (history, exam or medical decision-making) to be considered a “substantive portion” of the visit. If performing a key component of the visit is utilized, the practitioner who bills the visit must perform that component in its entirety. For critical care services, which are time-based codes, the physician or NPP must provide more than half of the total time in order to bill for the visit.

CMS also finalized a list of activities that may count toward the total time of the E/M visit for purposes of determining the provider who performed the substantive portion of the visit. Under the final rule, documentation in the medical record must identify both professionals who performed the visit, and the individual who performed the substantive portion (and bills for the visit) must sign and date the medical record. CMS clarified that for all split (or shared) visits, while one of the practitioners must have face-to-face (in-person) contact with the patient, the face-to-face contact does not necessarily need to be with the practitioner who performs the substantive portion and bills for the visit.

CMS also finalized the rule to provide important clarifications to its policy and to permit either a physician or an NPP to bill for split (or shared) visits for both new and established patients and for initial or subsequent visits. This expands the availability of split (or shared) visit billing in the facility setting.

Under its previous policy, CMS did not permit healthcare professionals to bill for split (or shared) visits for critical care services or for E/M visits in a SNF. In the proposed rule, CMS proposed to permit healthcare professionals to bill for split (or shared visits) that are critical care services. CMS also proposed to expand split (or shared) visit billing to permit E/M visits to be furnished by a physician and a NPP in a SNF setting. CMS finalized both these proposals in the final rule. However, CMS also proposed to clarify that no other E/M visit can be billed for a patient on the same date as critical care services are furnished when the services are furnished by the same professional (or professionals) in the same specialty and group. In light of significant public comments, CMS did not adopt this limitation as proposed. Rather, the final rule provides that an E/M service can be billed for a patient on the same day as critical care services as long as the physician documents that (1) the E/M service was provided prior to the critical care service (when the patient did not require critical care), (2) the E/M service is medically necessary, (3) the E/M service is separate and distinct from the critical care services, and (4) the E/M service does
not include any elements of the critical care services furnished later in the day. The critical care services must be reported using modifier -25 on the claim.

Under previous guidance, a physician and an NPP had to be in the “same group” in order to bill for a split (or shared) visit. In the proposed rule, CMS declined to define “same group” for purposes of the new split (or shared) visit billing rule and sought comments on how to define same group. The final rule retains the requirement that split (or shared) visits must be performed by a physician and NPP who are in the same group, although, consistent with the proposed rule, CMS declined to adopt a definition for a “group.” Commenters agreed with CMS that appropriately defining a “group” in the context of split (or shared) visits is a complex issue. Although CMS considered several options, including using the definition under the Stark Law or considering practitioners under the same billing tax ID number to be the same group, CMS declined to adopt a definition of “group.” This determination is important because if the two practitioners are determined not to be in the same group, neither practitioner will be able to bill for the visit, assuming neither performed a complete E/M visit. As it currently stands, providers will need to determine how to ensure that physicians and NPPs are practicing in the “same group” to bill for split (or shared) visits without explicit guidance from CMS.

CMS made it clear in the final rule that it will not pay for partial E/M visits. CMS also finalized its proposal to create a claim modifier that is mandatory for split (or shared) visits. This modifier will allow CMS to identify services furnished in part by NPPs and will allow for more targeted review of services furnished by physicians and NPPs. CMS did not provide the specific modifier that will be required.

The following chart summarizes the previous guidance and the finalized revisions to CMS’s policy for split (or shared) visits in the final rule:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Prior Guidance</th>
<th>Final Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who Can Bill?</td>
<td>Practitioner who performs a “substantive portion” of the E/M visit</td>
<td>Beginning January 1, 2022, the practitioner who performs more than half of the total (non-duplicated) time spent on the E/M visit or performs one of the three key components in its entirety (history, exam or medical decision-making); for critical care services, more than half of the total (non-duplicated) time spent on the E/M visit</td>
</tr>
<tr>
<td>Setting of Care</td>
<td>Institutional setting other than an SNF</td>
<td>Beginning January 1, 2023, for all services, the practitioner who performs more than half of the total (non-duplicated) time spent on the E/M visit</td>
</tr>
<tr>
<td></td>
<td>Any institutional setting, including SNFs (other than visits required to be performed in their entirety by a physician)</td>
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</tbody>
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### PRACTICAL IMPLICATIONS

CMS finalized significant changes to its long-standing policy on billing for split (or shared) visits in the facility setting. The changes provide both new opportunities for billing such visits, including for new patients, services in SNFs and critical care visits, but also restrict the reimbursement opportunity for services that are performed primarily by NPPs. In light of the new regulations, providers utilizing the split (or shared) billing concept, or who may do so in the future, should review the changes and ensure that their split (or shared) billing policies are consistent with the new rules.

Providers should begin considering how to track and document the time physicians and NPPs each spend furnishing services to patients. While this is consistent with the updated CPT guidance for E/M services, ensuring services meet the time requirements will also be important to the extent providers contemplate relying on the split (or shared) visit regulations to bill for services that are performed jointly by physicians and NPPs. While CMS has provided a one-year transition period for full implementation of the component of the rules governing how to evaluate whether a split (or shared) visit should be billed under the NPI of the physician or the NPI of the NPP who shared in furnishing services as part of the visit, this flexibility will end effective January 1, 2023. In addition, the medical record documentation and claim modifier requirements may necessitate modifications to longstanding documentation and billing practices for physicians and NPPs who furnish services in facility settings. Providers also should consider establishing and memorializing the definition of “same group” that will be used to determine which physicians and NPPs can jointly furnish services billed under the split (or shared) billing rules.