

CMS Proposes Updates to Physician Fee Schedule for 2020

On July 29, 2019, the *Centers for Medicare & Medicaid Services* (CMS) proposed significant changes to both fulfill the Trump Administration’s “*Patients over Paperwork*” initiative¹ and continue the paradigm shift in the healthcare reimbursement environment from a *volume*-based to a *value*-based system.² The 1,704-page *Medicare Physician Fee Schedule* (MPFS) proposed rule, which was published on August 14, 2019,³ includes proposed updates to payment policies, payment rates, and quality provisions for services rendered under the MPFS, as well as the proposed changes to the *Quality Payment Program* (QPP) established by the 2015 *Medicare Access and CHIP Reauthorization Act* (MACRA).

The QPP is currently comprised of two tracks: (1) the *Merit-based Incentive Payment System* (MIPS); and, (2) advanced *Alternative Payment Models* (APMs).⁴ CMS estimates that 818,000 clinicians will be MIPS-eligible for the 2020 performance period, while between 175,000 and 225,000 clinicians will be Qualifying APM Participants.⁵ Additionally, CMS anticipates that MIPS payment adjustments for 2020 will equal \$584 million (which will be equally distributed between negative and positive payment adjustments), and APM payments will approximate \$500-600 million.⁶ CMS’s proposed rule includes various updates to the MIPS and APM tracks, as well as a proposed new framework.

The most significant proposed changes to MIPS include the establishment of *MIPS Value Pathways* (MVPs). Commencing in 2021, this “*conception participation framework*” would seek “*to align and connect measures and activities across the Quality, Cost, Promoting Interoperability, and Improvement Activities performance categories of MIPS for different specialties or conditions.*”⁷ Currently, MIPS participating clinicians must report on a variety of metrics – under this new program, clinicians will report fewer (although more specialty-specific) measures.⁸



In addition to the introduction of MVPs, CMS is proposing to update MIPS by increasing the performance threshold for participants, as well as to change the weights for some of the MIPS performance categories (in a move toward equally weighting all performance categories by 2022), including:

- (1) Quality – Reducing the weight from the current 45% to 40% for 2020, 35% for 2021, and 30% for 2022; and,
- (2) Cost – Increasing the weight from the current 15% to 20% for 2020, 25% for 2021, and 30% for 2022.⁹

The proposed changes to the APM policies principally include changes to the APM quality scoring standards.¹⁰

Of interest, based on the amount of anticipated payments to eligible clinicians, and the estimated number of participants, the maximum positive payment adjustment under MIPS would be only \$1,428 per clinician; because the program is budget neutral, this would also be maximum negative payment adjustment (i.e., -\$1,428).¹¹ For APM participants, the amount is slightly larger, at approximately \$2,500 per participant.¹² These amounts have left some industry stakeholders questioning whether the payment adjustments are sufficient incentive for providers to comply.¹³

Regarding the proposed payment updates, a positive adjustment of 0.14% has been proposed to be applied to the MPFS *conversion factor* (CF) used to calculate payments for physician services; this adjustment is slightly higher than the 2019 CF adjustment of 0.13% and like last year, the CF used to calculate payments for anesthesia services includes a separate adjustment based on practice expense and malpractice.¹⁴ The 2020 CF includes a statutory update factor of 0% and a Relative Value Unit (RVU) Budget Neutrality Adjustment of 0.14% to the CF, resulting in the 2020 CF of 36.0896.¹⁵

Some of the more significant CMS proposed changes to the MPFS include:

- (1) Creating new evaluation and management (E/M) codes beginning 2021, which will retain the current five levels of physician office visits for established patients, but reduce the number of levels from five to four for new patient visits. This proposal is a deviation from last year’s proposed rule, wherein CMS suggested reducing the number of visit levels from five to two;

- (2) Adding three codes to the telehealth services reimbursable by Medicare, all of which concern office-based treatment of opioid use disorder;
- (3) Creating six new face-to-face codes for the purpose of describing and reimbursing for “*patient-initiated digital communications that require a clinical decision that otherwise typically would have been provided in the office*”;
- (4) Allowing providers (including physicians, teaching physicians, physician assistants, and advanced practice registered nurses) to simply review, sign, and date medical records, instead of re-documenting (as currently required) medical record notes created by other clinicians on the medical team, when furnishing and billing for professional services; and,
- (5) Allowing the remote patient monitoring codes (which became effective in 2019) to be delivered under general supervision (rather than under direct supervision), and creating a code for those remote monitoring sessions that surpass the initial 20 minutes.¹⁶

In addition to these myriad changes, CMS is seeking review of, and comments related to, a number of other topics. For example, as a follow up to the comments received in response to its request for information issued in June 2018,¹⁷ CMS is soliciting comments on potential changes to the Advisory Opinion process, as regards the Stark Law.¹⁸ Additionally CMS is soliciting comments related to the quality scoring for the *Medicare Shared Savings Program* (MSSP) and how it might align that scoring with the scoring already used for MIPS.¹⁹

CMS has made clear in its MPFS and QPP proposed rule for 2020 that many of these proposals and initiatives are aimed at reducing the administrative burden of providers, and estimates that this rule alone will save providers 2.3 million hours per year.²⁰ At the same time, CMS’s proposals, as they relate to the QPP, focus on continuing the shift from volume-based to value-based care. Whether the final rule differs from CMS’s original proposals, after the receipt of comments (which are due by September 27, 2019²¹), will be determined when it is released in late 2019.

1 “Patients Over Paperwork” Centers for Medicare & Medicaid Services, <https://www.cms.gov/About-CMS/story-page/patients-over-paperwork.html> (Accessed 8/21/19).

2 “Proposed Policy, Payment, and Quality Provisions Changes to the Medicare Physician Fee Schedule for Calendar Year 2020” Centers for Medicare & Medicaid Services, Fact Sheet, July 29, 2019, <https://www.cms.gov/newsroom/fact-sheets/proposed-policy-payment-and-quality-provisions-changes-medicare-physician-fee-schedule-calendar-year-2> (Accessed 8/21/19).

3 “Medicare Program; CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations” Federal Register Vol. 84, No. 157 (August 14, 2019), p. 40482.

4 *Ibid.*, p. 40730.

5 *Ibid.*, p. 40732, 40893.

6 *Ibid.*, p. 40732.

7 “2020 Quality Payment Program Proposed Rule Overview Factsheet with Request for Information for 2021” Centers for Medicare and Medicaid Services, Centers for Medicare and Medicaid Services, available at: https://www.cms.gov/Outreach-and-Education/Outreach/FFSProvPartProg/Provider-Partnership-Email-Archive-Items/2019-07-29-eNews-SE.html#_Toc15314089 (Accessed 8/12/19).

8 *Ibid.*; “CMS Proposes New MIPS Value Pathways in 2020 Physician Fee Schedule Update” Healthcare Information Management Systems & Society, August 7, 2019, <https://www.himss.org/news/cms-proposes-new-mips-value-pathways-2020-physician-fee-schedule-update> (Accessed 8/12/19).

9 CMS, (Accessed 8/12/19).

10 *Ibid.*

11 “CMS Proposes Extensive CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B; Medicare Shared Savings Program Requirements; and the Quality Payment Program” Missouri Hospital Association, Issue Brief, August 7, 2019, https://www.mhanet.com/mhainages/Issue%20Briefs/Issue%20Brief_Proposed%20CY%202020_PFS.pdf (Accessed 8/12/19), p. 12-13.

12 *Ibid.*

13 *Ibid.*

14 Calculated from the listed CY 2019 and CY 2020 conversion factors. “Proposed Policy, Payment, and Quality Provisions Changes to the Medicare Physician Fee Schedule for Calendar Year 2020” Centers for Medicare & Medicaid Services, Fact Sheet, July 29, 2019, <https://www.cms.gov/newsroom/fact-sheets/proposed-policy-payment-and-quality-provisions-changes-medicare-physician-fee-schedule-calendar-year-2> (Accessed 8/21/19).

15 Federal Register Vol. 84, No. 157 (August 14, 2019), p. 40882.

16 “Remote Patient Monitoring: Medicare Proposes Two Major Expansions” By Emily H. Wein, Nathaniel M. Lactman, Thomas B. Ferrante, Foley & Lardner LLP, August 6, 2019, <https://www.foley.com/en/insights/publications/2019/08/remote-patient-monitoring-medicare-expansions> (Accessed 8/16/19).

17 For more information, see the *Health Capital Topics* article entitled: “CMS to Review Stark Law Relevance Once Again” *Health Capital Topics*, Vol. 11, Issue 7 (July 2018), https://www.healthcapital.com/hcc/newsletter/07_18/HTML/STARK/convert_stark_reform_topics_article_7.24.18a_skr.php (Accessed 8/12/19).

18 Federal Register Vol. 84, No. 157 (August 14, 2019), p. 40726-40730.

19 *Ibid.*, p. 40705-40707.

20 “Trump Administration’s Patients over Paperwork Delivers for Doctors” Centers for Medicare & Medicaid Services, Press Release, July 29, 2019, <https://www.cms.gov/newsroom/press-releases/trump-administrations-patients-over-paperwork-delivers-doctors> (Accessed 8/12/19).

21 Federal Register Vol. 84, No. 157 (August 14, 2019), p. 40482.



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