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Physician Fee Schedule 2023 proposal: Change is always constant

By Ronald Hirsch, MD, FACP, CHCQM, CHRI

No sooner did the August issue of *Compliance Today* with my article "Observing the regulatory nuances of observation services" start printing, the Centers for Medicare & Medicaid Services (CMS) released the 2023 Physician Fee Schedule (PFS) proposed rule, meaning a few of the issues discussed will soon be rendered obsolete.[1] As you may recall, in my article, I discussed the nuances of physician billing and the evaluation and management (E&M) codes for observation services delineated by CMS.[2] Those rules only allowed the physician who orders observation services to bill the initial observation service E&M codes, and those codes can only be used on the day the observation services are ordered. It was unclear why CMS set such stringent rules for professional fee billing of observation visits since the same rules do not apply to the ordering of inpatient admission, where the work product of the physician is the same, but asking "why" about most issues is usually futile.

Say goodbye to observation E&M codes

CMS is now proposing in the 2023 PFS rule to completely eliminate those observation E&M codes, 99217-99220, and 99234-99236, replacing them with the initial and subsequent inpatient hospital codes, CPT 99221-99223 and 99231-99239.[3] These codes will be retitled "Hospital Inpatient and Observation Care Services." Since there will no longer be any observation-specific visit codes, the confusion over who can bill observation visit codes and on which day, as discussed in my August article, will vanish.

In addition, CMS is proposing to adopt the 2023 code selection changes released by the American Medical Association (AMA).[4] These changes will also align hospital visit code selection with the office visit code selection changes made in 2021. It will base the code selection on the level of medical decision-making or total time—except for emergency department visits, which will be based solely on medical decision-making. This should come as welcome news to all, as the proliferation of copy-and-paste documentation templates has led to notes that do little to tell the story of why the patient is hospitalized; however, it allowed the physician to meet the documentation requirements for chosen visit level.

But that does not mean the physician can simply document their medical decision-making and assign a code. The AMA specifies, "E/M codes that have levels of services include a medically appropriate history and/or physical examination, when performed. The nature and extent of the history and/or physical examination are determined by the treating physician or other qualified health care professional reporting the service." While these elements are not required, it is hoped physicians will act in the best interests of their patients and document the information that other caregivers will need to properly care for their patients.

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