ADVANCED CARE PLANNING

PAYMENT FOR ADVANCED CARE PLANNING SERVICES

Beginning on January 1, 2016, the Centers for Medicare and Medicaid Services will reimburse physicians and non-physician practitioners for certain Advanced Care Planning ("ACP") services.

Significantly, eligible providers may bill for ACP services even when they occur on the same day as a separately-billable Evaluation/Management ("E/M") service. ACP visits may also be billed separately during periods in which providers are receiving additional payments for Transitional Care Management, Chronic Care Management, or a globally-billed service.

CODING

ACP visits must include the explanation and discussion of advance directives such as a MOLST/POLST or other standard form by the physician or other qualified health care professional. An advanced directive may, but need not, be completed during the visit. Such visits must involve at least 30 minutes of face-to-face time with the patient, but can also include family members and/or a surrogate. The initial 30 minutes should be billed using CPT code 99497. Additional 30 minute blocks of ACP may be also billed, regardless of whether they occur on the same or subsequent day(s). Such additional 30 minute blocks should be billed using code 99498. Both codes use Status Indicator "A."

An ACP visit may only occur by agreement of the patient. Beyond that, however, the decision as to when an ACP visit might be appropriate is up to the broad discretion of the physician or NPP, subject to CMS' statement in the 2016 Physician Fee Schedule Final Rule that the ACP visit must be "reasonable and necessary for the diagnosis or treatment of illness or injury." Further, unlike with the new payment for non-face-to-face Chronic Care Management, CMS did not set forth detailed payment standards, other than a face-to-face requirement that excludes the ACP benefit from telehealth. Practitioners must, however, notify patients that ACP services are voluntary, and that Part B cost-sharing will apply.

PART OF TEAM-BASED APPROACH TO CARE

ACP may only be billed by physicians and NPPs whose scope of practice and Medicare benefit category include the services described by the applicable CPT codes. However, this does not mean that a physician or NPP must sit with the patient for the full 30 minutes of each billable encounter. In the Final Rule, CMS acknowledges that ACP will often be delivered by a multidisciplinary team, with a physician or NPP initiating the ACP encounter and then turning the visit over to a social worker or other staff member.

In such instances, ACP may be billed "incident to" the services of the physician or NPP, so long as the physician or NPP exercises general supervision. In all "incident to" encounters, however, CMS expects the physician or NPP billing the service to "manage,participate and meaningfully contribute to" the ACP visit.

IN CONJUNCTION WITH ANNUAL WELLNESS VISITS

ACP may also be billed in conjunction with, and in addition to, an Annual Wellness Visit ("AWV"). In addition to the G0438 or G0439 code for the AWV encounter, a 99497 or 99498 would be billed, using modifier -33. While an ACP visit is not billed "incident to" the AWV, the billing physician or NPP may utilize the services of others on the care team, so long as the billing provider manages and participates meaningfully in the encounter. Lastly, patients may be pleased to learn that Part B cost-sharing is not applied to ACP visits when performed in conjunction with an AWV.

While CMS has given practitioners broad leeway to determine when an ACP visit is appropriate, it may not be wise to bill for having young, healthy patients complete advanced directive forms. As noted above, the ACP codes are only available when the "service is reasonable and necessary for the diagnosis or treatment of illness or injury." While CMS states in the Final Rule that they view ACP services as less prone to overutilization, they do nonetheless intend to monitor ACP billing.

BROAD AVAILABILITY ACROSS SPECIALTIES AND SETTINGS

ACP payments are available to practitioners of every specialty, not simply primary care. The payments are available in both the facility and non-facility outpatient setting, with separate rules for payment in the hospital outpatient setting established in the 2016 Hospital OPPS Final Rule. However, CMS does not intend to issue a National Coverage Determination, but will instead leave implementation to local contractors.

STAND-ALONE ACP BILLING FOR FQHCS

ACP will be a stand-alone billable service by FQHCs when furnished by an FQHC practitioner and all other program requirements are met. Coinsurance will be applicable, but will be waived when ACP is provided in conjunction with an AWV. The Final Rule states that additional information on FQHC billing of ACP services will be available in sub-regulatory guidance, but as of the date of this Client Alert, such guidance has not been published.

TODAY'S BEST PRACTICES

ACP visits are a best-practice element of today's coordinated healthcare delivery model, and directly contribute to the cost-containment critical to success in any accountable care arrangement. Beyond that, however, advanced planning simply represents quality care, providing patients with choice and dignity in a most vulnerable phase of life.

Joel K. Goloskie
Senior Counsel

Joel K. Goloskie is Senior Counsel with Pannone Lopes Devereaux & O'Gara LLC and a member of the Health Care, Litigation, and Corporate & Business Teams. His experience ranges from compliance and HIPAA privacy matters to regulatory filings and approvals, contract drafting and management, and mergers and acquisitions. He has assisted health care clients as they dealt with compliance orders and deferred prosecution agreements, and has represented clients in both civil and criminal matters in federal court.

PANNONE LOPES DEVEREAUX & O'GARA LLC
counselors at law

Pannone Lopes Devereaux & O'Gara LLC is a full service law firm that provides legal services in multiple practice areas including administrative law, business and corporate law, health care law, municipal law, nonprofit law, employment law, estate planning, probate and trust litigation, criminal defense, civil litigation, government relations and strategies, real estate development and commercial lending and special masterships. Our attorneys are cross-trained in several disciplines and work in collaborative teams to quickly identify the core issues in any legal matter and prescribe the right strategy from concept through resolution in the most responsive and cost-effective manner. For more information about our firm and our attorneys, please visit www.pldolaw.com or contact our firm.