2020 Medicare Physician Fe Schedule Final Rule Nov. 15, 2019 pages 377-389

J. Review and Verification of Medical Record Documentation

1. Background

In an effort to reduce mandatory and duplicative medical record evaluation and management (E/M) documentation requirements, we finalized an amended regulatory provision at 42 CFR part 415, subpart D, in the CY 2019 PFS final rule (83 FR 59653 through 59654). Specifically, § 415.172(a) requires as a condition of payment under the PFS that the teaching physician (as defined in § 415.152) must be present during certain portions of services that are furnished with the involvement of residents (individuals who are training in a graduate medical education program). Section 415.174(a) provides for an exception to the teaching physician presence requirements in the case of certain E/M services under certain conditions, but requires that the teaching physician must direct and review the care provided by no more than four residents at a time. Sections 415.172(b) and 415.174(a)(6), respectively require that the teaching physician's presence and participation in services involving residents must be documented in the medical record. We amended these regulations to provide that a physician, resident, or nurse may document in the patient's medical record that the teaching physician presence and participation requirements were met. As a result, for E/M visits furnished beginning January 1, 2019, the extent of the teaching physician's participation in services involving residents may be demonstrated by notes in the medical records made by a physician, resident, or nurse.

For the same burden reduction purposes, we issued Change Request (CR) 10412, Transmittal 3971 https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2018Downloads/R3971CP.pdf on February 2, 2018, which revised a paragraph in our manual instructions on "Teaching Physician Services" at Pub. 100-04, Medicare Claims Processing Manual, Chapter 12, Section 100.1.1B., to reduce duplicative documentation requirements by allowing a teaching physician to review and verify (sign/date) notes made by a student in a patient's medical record for E/M services, rather than having to re-document the information, largely duplicating the student's notes. We issued corrections to CR 10412 through Transmittal 4068 https://www.cms.gov/Regulations-and-

Guidance/Guidance/Transmittals/2018Downloads/R4068CP.pdf and re-issued the CR on May 31, 2018. Pub. 100-04, Medicare Claims Processing Manual, Chapter 12, Section 100 contains a list of definitions pertinent to teaching physician services.

Following these amendments to our regulations and manual, certain stakeholders raised concerns about the definitions in this section, particularly those for teaching physician, student, and documentation; and when considered in conjunction with the interpretation of the manual provision at Pub. 100-04, Medicare Claims Processing Manual, Chapter 12, Section 100.1.1B., which addresses documentation of E/M services involving students. While there is no regulatory definition of student, the manual instruction defines a student as an individual who participates in an accredited educational program (for example, a medical school) that is not an approved graduate medical education (GME) program. The manual instructions also specify that a student is never considered to be an intern or a resident, and that Medicare does not pay for services furnished by a student (see Section 100.1.1B. for a discussion concerning E/M service documentation performed by students).

As stated in the CY 2020 PFS proposed rule, we are aware that nonphysician practitioners (NPPs) who are authorized under Medicare Part B to furnish and be paid for all levels of E/M services are seeking similar relief from burdensome E/M documentation requirements that would allow them to review and verify medical record notes made by their students, rather than having to re-document the information. These NPPs include nurse practitioners (NPs), clinical nurse specialists (CNSs), and certified nurse-midwives (CNMs), collectively referred to hereafter for purposes of this discussion as advanced practice registered nurses (APRNs), as well as physician assistants (PAs). Subsequent to the publication of the CY 2019 PFS final rule (83 FR 59653 through 59654), through feedback from listening sessions hosted by CMS' Documentation Requirements Simplification workgroup, we began to hear concerns from a variety of stakeholders about the requirements for teaching physician review and verification of documentation added to the medical record by other individuals. Physician and NPP stakeholders expressed concern about the scope of the changes to §§ 415.172(b) and 415.174(a)(6) which authorize only a physician, resident, or nurse to include notes in the

medical record to document E/M services furnished by teaching physicians, because they believed that students and other members of the medical team should be similarly permitted to provide E/M medical record documentation. In addition to students, these stakeholders indicated that "other members of the medical team" could include individuals who the teaching physician, other physicians, PA and APRN preceptors designate as being appropriate to document services in the medical record, which the billing practitioner would then review and verify, and rely upon for billing purposes.

Subsequent to the publication of the student documentation manual instruction change at section 100.1.1B of the Medicare Claims Processing Manual, representatives of PAs and APRNs requested clarification about whether PA and APRN preceptors and their students were subject to the same E/M documentation requirements as teaching physicians and their medical students. These stakeholders suggested that the reference to "student" in the manual instruction on E/M documentation provided by students is ambiguous because it does not specify "medical student". These stakeholders also suggested that the definition of "student" in section 100 of this manual

instruction is ambiguous because PA and APRN preceptors also educate students who are individuals who participate in an accredited educational program that is not an approved GME program. Accordingly, these stakeholders expressed concern that the uncertainty throughout the health care industry, including among our contractors, concerning the student E/M documentation review and verification policy under these manual guidelines results in unequal treatment as compared to teaching physicians. The stakeholders stated that depending on how the manual instruction is interpreted, PA and APRN preceptors may be required to re-document E/M services in full when their students include notes in the medical records, without having the same option that teaching physicians do to simply review and verify medical student documentation.

2. Proposed Provisions and Summaries of and Responses to Public Comments

After considering the concerns expressed by these stakeholders, we noted in the CY 2020 PFS proposed rule that we believe it would be appropriate to provide broad flexibility to the

physicians, PAs and APRNs (regardless of whether they are acting in a teaching capacity) who document and who are paid under the PFS for their professional services. Therefore, we proposed to establish a general principle to allow the physician, the PA, or the APRN who furnishes and bills for their professional services to review and verify, rather than re-document, information included in the medical record by physicians, residents, nurses, students or other members of the medical team. We explained that this principle would apply across the spectrum of all Medicare-covered services paid under the PFS. We noted that because the proposal is intended to apply broadly, we proposed to amend regulations for teaching physicians, physicians, PAs, and APRNs to add this new flexibility for medical record documentation requirements for professional services furnished by physicians, PAs and APRNs in all settings.

Specifically, to reflect our simplified and standardized approach to medical record documentation for all professional services furnished by physicians, PAs and APRNs paid under the PFS, we proposed to amend §§ 410.20 (Physicians' services), 410.74 (PA services), 410.75 (NP services), 410.76 (CNS services) and 410.77 (CNM services) to add a new paragraph entitled, "Medical record documentation." We noted that this paragraph would specify that, when furnishing their professional services, the clinician may review and verify (sign/date) notes in a patient's medical record made by other physicians, residents, nurses, students, or other members of the medical team, including notes documenting the practitioner's presence and participation in the services, rather than fully re-documenting the information. We also noted that, while the proposed change addresses who may document services in the medical record, subject to review and verification by the furnishing and billing clinician, it would not modify the scope of, or standards for, the documentation that is needed in the medical record to demonstrate medical necessity of services, or otherwise for purposes of appropriate medical recordkeeping.

We also proposed to make conforming amendments to §§ 415.172(b) and 415.174(a)(6) to also allow physicians, residents, nurses, students, or other members of the medical team to enter information in the medical record that can then be reviewed and verified by a teaching physician without the need for re-documentation.

We received public comments on the proposed Review and Verification of Medical Record Documentation provisions. The following is a summary of the comments we received and our responses.

Comment: Many commenters supported the premise for this documentation proposal which they stated almost unanimously would relieve burdensome documentation requirements for PAs, NP, CNSs, and CNMs who are authorized providers under Medicare Part B in that it

would minimize "note bloat" and clinician burnout, and would allow clinicians to focus their limited time instead on patient care. The commenters stated that enabling physicians other than teaching physicians, PAs and APRNs who furnish and bill for their professional services to review and verify, rather than re-document information included in the medical record by physicians, residents, nurses, students or other members of the medical team is forward-thinking, reflective of the professional healthcare setting and, it eliminates disparities in clinical training opportunities so that a student's experience ranks more than shadowing. The commenters noted that recognizing PA and APRN preceptors in the same manner as teaching physicians regarding student medical record documentation would advance access to quality care for Medicare beneficiaries particularly in rural and underserved areas by granting clinical training opportunities to PA and APRN students. Additionally, these commenters expressed support for this documentation proposal because they believed it would remove the disparity in burden reduction between physicians and clinicians such as PAs and APRNs and, instead would lead to parity for all suppliers of Medicare services paid under the PFS. The commenters also noted that another advantage of these documentation requirements is that they will lead to electronic health records (EHRs) being less cluttered with repetitive notes of little additional clinical use, making more meaningful information easier for physicians and clinicians to identify while offering greater certainty to medical team members and Medicare Administrative Contractors (MACs) alike.

Response: We appreciate the insight provided by commenters about how the broad

flexibility under our proposal would enhance the clinical training opportunities and experience for other physicians, PAs, APRNs and their students while still maintaining the integrity of the

information documented in the medical record as it is reviewed and verified by the billing practitioner.

Comment: A commenter supported the merit of the broad flexibility provided under the medical record documentation proposal and suggested that we could improve our proposal by including certified registered nurse anesthetists (CRNAs) and their students under this proposal because CRNAs are also included under the nursing industry's "APRN" umbrella. The commenter pointed out that the proposal currently includes NPs, CNSs and CNMs, which are three out of the four categories of APRNs. However, this commenter stated that CRNAs should also be included under this proposal, because not only are CRNAs considered APRNs, they are also authorized by Medicare to furnish and bill for E/M services and all medically necessary services within their state scope of practice. CRNAs regularly complete comprehensive E/M documentation for patients, which is also well within their scope of practice. Accordingly, the commenter believed that since this criterion was a factor in proposing the medical record documentation policy for PAs, NPs, CNSs and CNMs, CRNAs should be included under this policy.

Response: We appreciate the commenter bringing to our attention that CRNAs are another type of clinical nurse that the nursing industry recognizes as an APRN, and that the commenter believed should be included under this medical record documentation proposal. The regulations at § 410.69 interpret the statutory CRNA benefit category at section 1861(bb)(1) of the Act to authorize Medicare Part B payment to CRNAs for anesthesia services and related care that CRNAs are legally authorized to perform by the state in which the services are furnished. We also acknowledge that some states license CRNAs to furnish E/M services as part of the "related care" services authorized under their Medicare Part B benefit category. Upon further

reflection, we agree that it is appropriate to include CRNAs and their students, as well as other members of their health care team, for purposes of the medical record documentation proposal.

Comment: Several commenters suggested that CMS specifically name the types of students that it intends to include as those who are eligible to make notes in the medical record documentation in order to avoid unnecessary confusion by obscuring the intended scope of students as "other members of the medical team." These commenters stated that explicitly naming the types of clinicians and students for which the documentation they add can be reviewed and verified by the billing professional would eliminate misinterpretation on the part of health systems, care providers, and educators, and would improve both clinical training opportunities and, ultimately, patient care.

Response: We acknowledge that uncertainty in the healthcare industry and for MACs about the specific types of students who were allowed to make notes in the medical record which teaching physicians could review and verify without re-documenting was a factor we considered in proposing to revise the documentation requirements in the CY 2020 PFS proposed rule. We find the comment to be persuasive regarding the need for us to be more explicit regarding the flexibility we intend to establish for other physicians, PAs and APRNs and their students. Given that the initial impetus for our proposal was to address potential confusion about our reference in a manual provision to "students," we would not want to generate any further potential for confusion with this policy. In making our proposal, we referred not only to medical students, but more broadly to students in the disciplines of the clinicians who are authorized to bill the Medicare program for a broad spectrum of health care services, including all level E/M services. We agree with the commenters that it is important to

be clear about the scope of this policy and, therefore, we will modify our proposal to explicitly list the types of students for which the medical records documentation policy applies rather than using a generic reference to "students." Therefore, at §§ 410.20, 410.69, 410.74, 410.75, 410.76 and 410.77, we will modify our proposed amendments to the regulation to specify the types of students who may make notes in the medical record that may then be reviewed and verified, rather than re-documented, by the billing clinician.

Comment: Several commenters suggested that CMS specify that physicians, PAs, and APRNs may sign off on only those notes in the medical record made by someone of their same provider type or discipline. For example, a PA may only review and verify information included in a patient's chart by another PA or PA student. One of these commenters stated that CMS should withhold any documentation requirement changes until the agency establishes guidelines in future rulemaking that clarify the circumstances under which a clinician would be permitted to review and verify medical record documentation. Conversely, a few of these same commenters questioned the proposal and stated that it is unclear whether a PA or APRN can sign off on any resident or student documentation regardless of their credential level. For example, a PA would be able to attest and bill for work that was performed by a senior resident who is training to become a medical doctor. A few of these commenters warned that scope of practice laws may impose documentation requirements that lead to physicians and clinicians only reviewing documentation of their own student types and not that of other disciplines. Furthermore, the commenters stated that the teaching physician services requirements do not permit PAs and APRNs to formally act as teaching physicians.

> Response: We did not propose any limitations that would restrict a billing professional to only reviewing and verifying documentation in the medical record entered by health care team members practicing or training within their same specialty or discipline. We believe that this

type of limitation on our proposal would defeat our intended purpose to provide broad flexibility, establishing a generalized principle for medical record documentation for all professional services paid under the Medicare PFS in all settings. Therefore, we disagree with the commenters' recommendation, and are not finalizing restrictions on the scope of medical record documentation entered by members of the medical team that can be reviewed and verified by the billing professional. Additionally, our documentation proposal does not address any applicable billing or payment requirements for the work or services that others furnish in connection with the professional services that are billed by teaching physicians, other physicians, PAs or APRNs. Rather, our proposal is limited to addressing who is authorized, for purposes of the Medicare program, to review and verify documentation in the medical record entered by certain individuals, without having to re-document the information.

Comment: Similarly, several commenters representing physicians supported making the proposed changes to medical record documentation requirements for physicians only, and not for PAs and APRNs. They stated that only physicians submitting a claim for services are responsible and appropriately trained to review and verify documentation in the medical record provided by physicians, residents, nurses, students, or other members of the medical team across the spectrum of all Medicare-covered services paid under the PFS. They maintained that safeguards must be in place to ensure the medical record includes accurate documentation of clinical findings, treatments, and ongoing care plans by all members of the medical team.

Response: We note that the billing professional, in submitting a claim to Medicare for services paid under the PFS, is responsible for the accuracy of the information included on that claim. While we appreciate the perspective of these commenters, stakeholders and other

commenters have made it clear to us that the role of PAs and APRNs has changed to the point that our current regulations present an unintended burden for billing practitioners, unnecessarily requiring them to re-document information entered into the medical record by physicians, residents, nurses, students, and other members of the medical team when it would be sufficient for them to simply review and verify it. Therefore, we are not establishing a requirement in this final rule that only a billing physician may review and verify documentation in the medical record added by physicians, residents, nurses, students, and other members of the medical team.

Comment: Commenters requested clarification about whether multiple students and residents can enter documentation into the medical record on the same day and during the same office visit. One commenter stated that, currently, MACs or auditing agencies will deny PA or APRN services when furnished on the same day as a service billed by a physician regardless of the physician's specialty.

Response: We appreciate the information and suggestion provided by these commenters. We did not propose a limitation on how many members of the medical team can enter information in the medical record for a given date of service or patient encounter, and do not believe such a limitation is warranted. We did not address the scope of services that can be billed for a patient on the same date of service. Therefore, this aspect of the comment is outside the scope of the proposed rule and we will not address it in this final rule.

Comment: Several commenters encouraged CMS to re-examine the current requirements

regarding documentation of the billing practitioner's physical presence and participation in certain E/M services and procedures. The commenters stated that this physical presence and participation requirement results in significant burden for teaching physicians and PA and

APRN preceptors when their students are participating in patient care. These commenters stated that while physical presence and participation of physicians and practitioners in the clinic is critical for safe patient care, presence in the examination room during documentation is onerous and unnecessary. The commenters also noted that this requirement greatly diminishes the learning experience for students, as they do not develop the ability to think or operate independently, formulate diagnoses, and generate treatment plans, producing less experienced graduate clinicians who are not as prepared as they could be to provide care on their own.

Response: We did not propose any changes to requirements pertaining to the documentation of physical presence and participation for certain E/M services and procedures at §§ 415.172 and 415.174, and we are not addressing these requirements in this final rule.

Comment: A commenter questioned whether this proposal recognizes "scribes" other than a medical assistant or a registered nurse for purposes of entering notes in a patient's medical record. The commenter defined a scribe as an independent individual assisting a single care provider, and expressed concern that utilizing clinical support staff as a scribe to document services will lead to dissatisfaction of employees and loss of clinical support staff, which would adversely affect the shortage in clinical support staff that already exists. Likewise, a commenter suggested that CMS should explicitly include dieticians and nutritionists among the other members of the medical team who are eligible to enter notes in the medical record.

Response: We proposed broad flexibility for teaching physicians, other physicians, PAs and APRNs to use their discretion in identifying, for each particular case, the individuals who are serving as members of the medical team, potentially including scribes, dieticians,

nutritionists, or other members of their medical team. Although we are modifying our proposal to clarify the scope of students that may be considered members of the medical team for purposes of this documentation policy as explained above, we intentionally did not propose to specify who can be included as a member of the medical team.

Comment: One commenter questioned whether their assumption is correct that this proposal applies to all types of services (that is, procedures, E/M services, and diagnostic services).

Response: The commenter's assumption is accurate; our proposed medical record documentation policy would apply broadly to all services of physicians, PAs and APRNs, regardless of the type of service (E/M, procedure, diagnostic test) or the setting in which the service is furnished.

Comment: We received a number of comments that were outside the scope of the CY 2020 PFS proposed rule.

Response: We appreciate and will consider these comments for other purposes including possible future rulemaking.

After considering the comments, we are finalizing our proposal with a couple of modifications. We are explicitly naming PA and NP, CNS, CNM and CRNA students as APRN students, along with medical students, as the types of students who may document notes in a patient's medical record that may be reviewed and verified rather than re-documented by the billing professional; and revising §§ 410.20, 410.69, 410.74, 410.75, 410.76, 410.77, 415.172 and 415.174 to reflect this change. Additionally, similar to the revisions we are making to the regulations at §§ 410.20, 410.69, 410.74, 410.75, 410.76, 410.77, 415.172 and 415.174, we are amending our regulation at

§ 410.69 to add a new paragraph (5) under the definition of CRNA to include CRNAs as a category of APRNs for purposes of this policy, and to include CRNA students under the reference to APRN students.