CAFM Council of Academic Family Medicine

Society of Teachers of Family Medicine
Association of Departments of Family Medicine
Association of Family Medicine Residency Directors
North American Primary Care Research Group

April 3, 2020

Administrator Seema Verma
Centers for Medicare & Medicaid Services
Department of Health and Human Services,
200 Independence Avenue SW
Washington, DC 20201

Re: Clarification Needed Regarding Supervision of Residents and Primary Care Exception

Dear Administrator Verma,

We are extremely appreciative of the information you included in the interim rule *Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency;* CMS-1744-IFC**.** The multiple waivers and changes to rules to accommodate changes in healthcare practice needed to respond to the COVID-19 public health emergency are extremely helpful and we greatly appreciate your work that addresses questions relating to teaching physicians' supervision of residents and allows remote precepting.

We write to ask for clarification of some of the particulars included in the interim rule with comment. Our need for clarification relates to two areas: 1) Direct supervision of residents using the primary care exception, and 2) the use of telephone for visits where residents are involved in the provision of services.

Direct Supervision of Residents under the Primary Care Exception:
The interim rule has made a change to the supervision requirements used for telehealth services. Specifically, the rule states,

"We are altering the definition of direct supervision at § 410.32(b)(3)(ii), to state that necessary presence of the physician for direct supervision includes virtual presence through audio/video real-time communications technology when use of such technology is indicated to reduce exposure risks for the beneficiary or health care provider. We are revising § 410.32(b)(3)(ii) to include, during a PHE, as defined in § 400.200 of this chapter, the presence of the physician includes virtual presence through audio/video real-time communications technology when use of such technology is indicated to reduce exposure risks for the beneficiary or health care provider."

With respect to the primary care exception, the interim rule states, "Medicare may make payment under the PFS for services billed under the primary care exception by the teaching physician when a resident furnishes telehealth services to beneficiaries under the direct supervision of the teaching physician by interactive telecommunications technology." CMS has stated in the rule that "the use of real-time, audio and video telecommunications technology allows for the teaching physician to interact with the resident through virtual means <u>while the resident is furnishing services</u> via telecommunications technology." That makes sense for

Hope R. Wittenberg
Director, Government Relations 1133 Connecticut Ave. NW, Suite 1100 Washington, DC 20036 Ph: 202.986.3309 hwittenberg@stfm.org

regular EM visits under telehealth. However, although the rule says that the primary care exception applies, it seems that the new definition of direct supervision negates that statement.

The primary care exception allows for payment for services the resident performs (after the resident has trained for more than six months) when the teaching physician is not present, as long as supervision by the teaching physician is provided in the following manner: "Review the care furnished by residents during, or immediately after, each visit. This must include a review of the patient's medical history and diagnosis, the resident's findings on physical examination, and the treatment plan (for example, record of tests and therapies)." https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2019Downloads/R4283CP.pdf

If the definition of direct supervision means "virtual presence through audio/video real-time communications technology…while the resident is furnishing services…" this would be a step back from pre-PHE circumstances and effectively doesn't allow for the primary care exception. However, if CMS affirms that direct supervision can be provided by interactive telecommunications technology immediately following the telehealth visit, that would allow for the use of the primary care exception.

Will CMS clarify, in keeping with current practice under the primary care exception, the supervision of primary care residents under the primary care exception can be performed through communications technology immediately following telehealth visits performed by residents?

Phone Visits Provided by Residents

The interim rule states that "We believe there are many circumstances where prolonged, audio-only communication between the practitioner and the patient could be clinically appropriate yet not fully replace a face-to-face visit." The rule stipulates that (CPT codes 98966 -98968(for non-physicians) and 99441-99443 (used by physicians)) are to be used for phone services. Like the questions above, these codes do not seem to be in accordance with the primary care exception – and as such, are not helpful during this emergency. Work performed by residents, and precepted by teaching physicians have traditionally not been able to be billed under time-based codes. We believe that residents should be able to provide those services by phone and be supervised as they normally would be under the primary care exception. This is critically important for residents working from home in quarantine or providing care for patients in rural areas, and others who are without video technology. If a Medicare patient does NOT have video capability, and isn't safe to come to office, family medicine residency practices need to be able to perform a phone visit using 99441-3. Logistically, especially during the public health emergency, it's not practical to have the attending physician work force to spend direct time on the phone with the patient in addition to the resident, especially for the visits incorporated under the primary care exception. Programs can still comply with the 1:4 ratio (preceptor/resident) requirements, teaching physicians will still be immediately available for supervision, and precept every case -- the only difference is lack of video.

Will CMS declare that the phone visit CPT codes 99441-99443 are able to be billed under the primary care exception during this emergency?

As you continue to work to address the concerns of the provider community to help provide needed care to patients during this emergency, we would appreciate your issuing clarification of these two issues in your FAQs regarding regulatory flexibility during the current COVID-19

public health emergency. If you have any questions, please contact Hope Wittenberg, Director, Government Relations, at 202-986-3309 or hwittenberg@stfm.org.

Sincerely,

Frederick Chen, MD, MPH
President
Society of Teachers of
Family Medicine

Deborah S Clements, MD
President
Association of Family
Medicine Residency Directors

Allen Perkins, MD, MPH
President
Association of Departments
of Family Medicine

Jack Westfall, MD
President
North American Primary Care
Research Group