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March 16, 2021

Acting Administrator Richter
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Acting Administrator Richter:

On behalf of the American College of Physicians (ACP), the largest medical specialty organization and the second largest physician group in the United States, we applaud the actions taken to date by the Centers for Medicare and Medicaid Services (CMS) aimed at swiftly defeating COVID-19. ACP members include 163,000 internal medicine physicians, specialists, and medical students dedicated to scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness. These actions have provided critical flexibilities that have allowed physicians to focus on the practice of medicine and getting patients back to their normal lives. At the same time, per our conversations with your staff, the College believes that additional emergency actions are necessary to supplement the work to date to combat this deadly pandemic. The College appreciates this opportunity to offer our feedback, and we look forward to continuing to work with the Agency to implement policies that promote the health and safety of patients during this public health emergency (PHE).

Respectfully, the College strongly urges CMS to take the following actions:

- **Provide payment and coverage for CPT code 99401 (Preventive medicine counseling and/or risk factor reduction intervention(s) provided to an individual (separate procedure); approximately 15 minutes) to ensure that appropriate counseling and risk factor reduction services are provided to patients seeking advice from their primary care physician without a face to face encounter.**
- **Provide guidance to teaching physicians about the counting of time spent by residents providing care to patients in a teaching hospital for the purposes of code selection.**
- **Provide clarification on counting certain activities toward medical decision-making (MDM) when billing office evaluation and management (E/M) visits.**

<u>Payment for 99401</u>

While there continues to be uptake among Americans receiving the COVID-19 vaccines, many patients are still having trouble scheduling vaccinations. One study noted that 40% of primary care physicians report spending significant time investment trying to find vaccines for their most vulnerable patients. At the same time, primary care physicians are hard at work trying to build vaccine confidence as patients continue to turn to them with their questions about, the vaccine's safety and effectiveness. In fact, 73% of physicians report their relationships with patients has been key to addressing concerns and questions about the vaccine. Additionally, a significant supermajority of patients (80%) reported trusting their primary care doctor and 66% of patients were more willing to speak to their primary care doctor about a potential COVID

exposure, while only 20% were willing to speak with public health officials. These data points underscore the vitality of the patient-physician relationship in getting Americans vaccinated against COVID-19.

Although most community-based physician practices are not yet administering COVID-19 vaccinations, many report providing significant counseling and risk factor reduction services to patients who are concerned about COVID-19 or who are trying to get vaccinated against the virus. However, coding and payment has not been made available to allow physicians to bill for these services. While office visit E/M visits, telephone E/M, virtual check-ins, and e-visits have been made available by CMS during the pandemic to provide for virtual care, these coding options are not sufficient to meet the current needs. Specifically, the E/M visits are not available for billing as no diagnoses have been established to necessitate an E/M visit. Patients are calling for advice from their doctors, not to set up a visit for a medical problem/issue they are experiencing. Additionally, virtual check-ins are an ineligible option as they are for patients seeking to determine whether an E/M visit is necessary. In the case of COVID-19 vaccinations, patients are seeking to understand the risks associated with getting a COVID-10 vaccine, and where to find a vaccine. These are not examples of patients checking in with their physician to understand whether an office visit is necessary. It is merely for advice and counseling.

Therefore, the College strongly urges CMS to make coding and payment available for time spent by physicians providing counseling services to patients who are seeking to mitigate their risk for COVID-19 infection. **Specifically, ACP encourages CMS to make payment and coverage available for CPT code 99401 *(Preventive medicine counseling and/or risk factor reduction intervention(s) provided to an individual (separate procedure); approximately 15 minutes),* wRVU 0.48. The College believes that this code adequately describes the resources and physician work involved in providing counseling and risk factor reduction services to patients with inquiries about COVID-19. We encourage CMS to temporarily make payment available for this code through at least December 31, 2021 and waive the face to face requirement associated with this service.**

COVID 19 vaccines have been available since December of 2020 and physician have been receiving inquiries from their patients and providing significant counseling and risk factor reduction services to patients who are concerned about the COVID-19 vaccines prior to that time. ACP further urge CMS to make payment for CPT code 99401 retroactive for physician that have provided this service to January 1, 2021.

Resident Time in Teaching Hospitals

ACP strongly supports CMS' decision to move forward with changes to ensure that Medicare office E/M payments to physicians better recognize the value of cognitive services in providing quality care to patients. These changes are especially important at a time when many primary care practices in particular are under severe financial stress due to the COVID-19 pandemic and are at risk of closing their doors. **However, the College seeks clarification regarding billing for time spent by residents with patients independent of the teaching physician in qualified Graduate Medical Education (GME) programs. For example, when the resident spends time alone in the room with the patient, then discusses the patient with the teaching physician, can the resident's time be added to the attending's time in selecting the visit level? Alternatively, would only the teaching physician's time count towards code selection?** We look forward to clarification on this important point to ensure that internists have the correct guidance when billing for their services.

Clarification on Performance and/or Interpretation of Diagnostic Tests/Studies

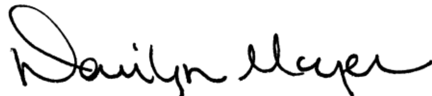
Guidance from one of CMS' Medicare administrative contractors (MACs) noted that for MDM in the case of code selection for office E/M visits:

> "The actual performance and/or interpretation of diagnostic tests/studies during a patient encounter are **not included** in determining the levels of E/M services when reported separately. If it is billed separately, cannot receive credit for order and interpretation in the MDM."

This guidance raises an important question for both physician practices that have labs incorporated into their practices and those who submit orders for tests/labs to independent labs. In the case of counting activities towards MDM, suppose a physician a member of a medical group and sees a patient with gastrointestinal (GI) bleeding and orders a test during the visit**. Does the group bill for the test? If so, does the group submit the claim under the taxpayer identification number (TIN) for the professional corporation (PC)? Conversely, did the group establish a separate PC for the lab and, if so, did the lab submit the claim for the test? Additionally, if the group billed for the test under a separate TIN, can the physician still bill for ordering the test as part of MDM? These are important questions for internists who are getting accustomed to the new office visit E/M code selection rules. The College appreciates further clarification from CMS.**

Thank you for the opportunity to follow-up on our conversation about the need to ensure appropriate resources are made available to ensure the success of the current nationwide vaccination program against COVID-19. The College welcomes the actions taken by CMS to date to get as many shots into arms as possible. We welcome the opportunity to discuss additional challenges that remain obstacles to fully vaccinating Americans against COVID-19. If you have any questions, please reach out to Brian Outland at boutland@acponline.org.

Sincerely,



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