

determinations on *CMS.gov* approximately 2 weeks prior to a public meeting.

(4) After consideration of public consultation provided at a public meeting on preliminary benefit category determinations and payment determinations for items and services, CMS establishes the benefit category determinations and payment determinations for items and services through program instructions.

[86 FR 73911, Dec. 28, 2021]

Subpart E—Determination of Reasonable Charges Under the ESRD Program

§414.300 Scope of subpart.

This subpart sets forth criteria and procedures for payment of the following services furnished to ESRD patients:

- (a) Physician services related to renal dialysis.
- (b) Physician services related to renal transplantation.
- (c) Home dialysis equipment, supplies, and support services.
- (d) Epoetin (EPO) furnished by a supplier of home dialysis equipment and supplies to a home dialysis patient for use in the home.

[55 FR 23441, June 8, 1990, as amended at 56 FR 43710, Sept. 4, 1991; 59 FR 1285, Jan. 10, 1994]

§414.310 Determination of reasonable charges for physician services furnished to renal dialysis patients.

(a) *Principle.* Physician services furnished to renal dialysis patients are subject to payment if the services are otherwise covered by the Medicare program and if they are considered reasonable and medically necessary in accordance with section 1862(a)(1)(A) of the Act.

(b) *Scope and applicability*—(1) *Scope.* This section pertains to physician services furnished to the following patients:

- (i) Outpatient maintenance dialysis patients who dialyze—
 - (A) In an independent or hospital-based ESRD facility, or
 - (B) At home.

(ii) Hospital inpatients for which the physician elects to continue payment under the monthly capitation payment (MCP) method described in §414.314.

(2) *Applicability.* These provisions apply to routine professional services of physicians. They do not apply to administrative services performed by physicians, which are paid for as part of a prospective payment for dialysis services made to the facility under §413.170 of this chapter.

(c) *Definitions.* For purposes of this section, the following definitions apply:

Administrative services are physician services that are differentiated from routine professional services and other physician services because they are supervision, as described in the definition of “supervision of staff” of this section, or are not related directly to the care of an individual patient, but are supportive of the facility as a whole and of benefit to patients in general. Examples of administrative services include supervision of staff, staff training, participation in staff conferences and in the management of the facility, and advising staff on the procurement of supplies.

Dialysis session is the period of time that begins when the patient arrives at the facility and ends when the patient departs from the facility. In the case of home dialysis, the period begins when the patient prepares for dialysis and generally ends when the patient is disconnected from the machine. In this context, a dialysis facility includes only those parts of the building used as a facility. It does not include any areas used as a physician’s office.

Medical direction, in contrast to supervision of staff, is a routine professional service that entails substantial direct involvement and the physical presence of the physician in the delivery of services directly to the patient.

Routine professional services include all physicians’ services furnished during a dialysis session and all services listed in paragraph (d) of this section that meet the following requirements:

- (1) They are personally furnished by a physician to an individual patient.
- (2) They contribute directly to the diagnosis or treatment of an individual patient.