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Optometry Coding & Billing Alert

Compliance: Master Co-Management to Ensure the Happiness of Patients, Doctors -- and Auditors

Never imply that co-management is an agreement to refer, experts advise.

For eye care professionals, co-managing an eye surgery patient can offer myriad benefits the ophthalmologist can perform a surgical procedure, and an optometrist can manage the patient post-surgically. However, the arrangement can create compliance challenges that you should know before you decide to pursue a co-management relationship in your office.

Get to know the following five compliance considerations that could impact your eye care practice.

1. Ensure That Physician, Patients Agree to Co-Management

When you're thinking about pursuing a co-management relationship, the key decision-makers of whether and when care is transferred to a primary eye care provider are the surgeon and the patient. A primary eye care provider may want to co-manage patients referred to an ophthalmologist for surgery, but the primary eye care provider cannot, and should not drive the decision.

"From a clinical standpoint, when a surgeon does a procedure on a patient, he or she is responsible for that patient through that patient's recovery," says **Allison Shuren, JD**, a partner in the Life Sciences and Healthcare Regulation Practice at Arnold & Porter in Washington, DC. "Therefore, the physician needs to decide, along with the patient, at what point it's clinically appropriate to transfer care if the patient even wants to transfer care."

If the patient is interested in going back to the optometrist for post-operative care, the "surgeon and not the optometrist must decide when is it clinically appropriate to release the patient to the OD," Shuren says. "Once the patient is transferred back to the OD, there should be some follow-up from the optometrist to the surgeon, noting that the patient continues to do well, and if something seems to be amiss, that the patient is going to be referred back to the surgeon." Both practices should keep copies of that communication in their records, she advises.

Stay on top of care: Unfortunately, in some cases, the surgeon and optometrist don't realize that they still continue to have joint responsibility for the patient's post-operative care even if the other party is seeing the patient on a particular day. "They are both responsible that's why it's called co-management," Shuren adds.

2. Know the Laws That Affect You

To ensure that you're staying compliant during a co-management situation, you should first get a handle on which laws will impact the relationship, says **Christina Hughes, JD, MPH**, an associate with Powers Pyles Sutter & Verille, PC in Washington, DC.

"When you're dealing with Medicare patients in such co-management situations, you should first be aware of the Stark law, which prohibits self-referral," she says. "For certain types of health services including providing post-cataract surgery glasses and contacts, a physician cannot refer to another physician or entity with which it has a financial relationship unless an exception is met."

Although exceptions do exist for the provision of post-cataract surgery glasses and contacts as well as some other potential situations, you should ensure that you aren't referring your patients to practices where you're an owner, investor, or where you have any other type of financial relationship.

You also want to be careful not to violate the Anti-Kickback statute, Hughes says. "This is actually more of a problem in situations like this because the OIG takes a pretty dim view of fee-splitting. They have not said outright that fee splitting is impermissible, and they have issued at least one favorable advisory opinion on exactly the type of co-management situation that an optometrist and ophthalmologist would find themselves in but it is something to be very concerned about and really the key for ensuring compliance would be to make sure there's no quid pro quo transfer of value between the physicians in exchange for the referral."

3. Avoid Written Agreements to Refer

The optometrist and ophthalmologist may be tempted to memorialize their agreement to co-manage a patient, but you should avoid setting your agreement in stone, Shuren says.

"The decision to co-manage should be made on a patient-by-patient basis, based on the patient's wishes and clinical status, so there should never be an agreement to refer," she notes. A formal agreement to refer could make it appear as a violation of the anti-kickback statute. "It's also a matter of medical ethics," Shuren adds. "The surgeon can't force a patient to go to co-management if the patient wants to stay with the surgeon, they should do so."

Unfortunately, she has seen situations where optometrists have said to surgeons, "I'm not going to refer you my surgical patients unless you agree that you'll send them back to me so I get the opportunity to bill for the post-op care," and from every perspective, that's inappropriate.

This document is okay: If you do agree to co-manage a patient, the ophthalmologist can create a document outlining the terms of his clinical protocol. "It can be a general document explaining how many times he likes the patient to be seen after surgery," Shuren says. "It's not an agreement to refer, it's an agreement on the protocols for care, when and if one refers to the other."

4. Mind Your Modifiers

Both the ophthalmologist and optometrist should ensure that they stay on the right side of the billing and coding regulations. "There are modifiers that should be put on the claim for Medicare patients that signal to Medicare that the surgeon is billing for the surgery and that he or she may see the patient one day post-operatively during the 90-day global period, and then the optometrist is taking over," Shuren says.

If the surgeon provides any portion of post-operative care, he must bill the surgical code with both modifier 54 (Surgical care only) and modifier 55 (Postoperative management only) with a date in the remarks field to indicate the date the post-operative care is transferred to the optometrist. The optometrist may not bill for post-operative care until he has provided at least one post-operative visit. At that time, the optometrist will submit the claim using the same date as the original surgery and the original surgical code with modifier 55. Again, the remarks field of the claim form will need to indicate the date on which care was assumed.

If the transfer of care takes place immediately after surgery, the surgeon bills for the surgery only with modifier 54 and the optometrist will bill with modifier 55 and no remarks are needed on the claim form by the optometrist to indicate the date the care began.

It is also important that both practices keep a copy of the transfer agreement made with the patient in their respective medical charts. Additional information on the use of modifiers 54 and 55 can be found in the Medicare Claims Processing Manual, Chapter 12, Section 40.2.A.3

When using modifiers 54 and 55, the payer will pay the surgeon for the surgical portion, while the post-operative care will be paid to the optometrist. If the surgeon provides a portion of the post-operative care, the post-operative portion of the payment will be split between the two doctors. Amounts reimbursed for surgical CPT® codes are typically divided into a percentage paid for each of the pre-operative, surgical and post-operative components that go into determining the overall code reimbursement.

When treating non-Medicare patients, you may run into a scenario when the payer doesn't credential optometrists, and in those cases the ophthalmologist may want to pay the optometrist directly for his co-management. "In those scenarios, whether the ophthalmologist can pay the optometrist for the post-operative care will depend on the insurer's rules and state laws," Shuren says. "It's always preferred that they each bill the insurer directly when possible," she adds.

What If Your Practice Employs Both Doctors?

If both the ophthalmologist and the optometrist work for the same practice and bill under the same NPI, you shouldn't have to worry as much about your co-management arrangement.

"How the physicians are compensated by the practice for their work, and referrals, could be at issue, but generally physician services are not what the Stark Law is aimed at," Hughes advises. "As long as they are bona fide employees of a group practice and are billing under a single NPI, the fee splitting concerns that arise in many co-management situations would be far less of a factor."

5. Get the Patient's Permission

Remember that it's important to ask your patients if they want co-management, and if so, have them sign informed consent and keep it in the files of both doctors. The patient's desire to be co-managed should be the number one reason to pursue this arrangement. For instance, the patient decides to have surgery by a recommended ophthalmologist but wants to have post-operative care in a location that is closer to their home than where the ophthalmologist is located. Whatever the patient's reason for wanting co-management, it should be the real key to considering this arrangement. Co-management should not be considered unless the patient requests it or it is in the best interests of the patient. Careful documentation of the patient's request should be made in the medical record.

"Although this has not been an exquisite requirement for any exception or safe harbor that might apply under the law, the American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgery have issued guidelines on co-management, and they highly recommend getting the patient's permission for making these referrals," Hughes says. "It certainly would fall within a best practices category to do so."

In addition, some states and Medicare carriers may require consent, so it's important to find out the regulations where you live before getting into a co-management relationship.