

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Don't Charge Patients For Services Medicare Already Covers

Beware gray areas of services Medicare may or may not reimburse

If your practice charges patients a monthly or annual fee for extra attention, you could receive some extra attention of your own - from the feds.

Two warnings: The feds have warned against so-called "concierge care" twice in recent years. In 2002, then-HHS Secretary **Tommy Thompson** wrote a letter to Rep. **Henry Waxman** (D-CA) explaining that physicians aren't allowed to bill Medicare patients for any services that Medicare might cover, notes **John Marquis**, an attorney with **Warner, Norcross and Judd** in Grand Rapids, MI.

Then, the **HHS Office of Inspector General** (OIG) issued a fraud alert in March 2004 about "Added Charges For Covered Services." The OIG said it had alleged that a particular physician violated his assignment agreement by charging an annual fee of \$600 for spending more time with patients even though Medicare was already paying for the visits.

Since those warnings came out, providers are "being more cautious," says **Wayne Miller** with **Compliance Law Group A PLC** in Woodland Hills, CA. But Miller still sees a lot of interest in this topic among providers.

The bottom line: If you're going to charge a higher fee for extra time or attention, [the service] should be something that Medicare doesn't cover, Miller explains. Unfortunately, experts disagree on what Medicare is and isn't paying for through its fee schedule.

Not covered: Clearly Medicare doesn't cover certain services - or doesn't cover them as adequately as it could. For example, if your physician provides a lot of counseling on nutrition, pharmacological issues or lifestyle, Medicare won't consider the services medically necessary - and the most your physician can bill for is the lowest level evaluation and management code, notes Miller. Accordingly, providers rendering these services may wish to alter their fees to secure more acceptable reimbursement.

Counseling and other types of "wellness" visits are very valuable to patients, and Medicare doesn't cover them apart from the one-time "Welcome to Medicare" exam.

Hand-holding Is A Billable Service

In addition to counseling and preventive care, there's a slew of other non-covered services that physicians may wish to charge for. Some primary care doctors will promise to go with the patient when he or she has to visit a specialist, notes **Allan Jergesen**, an attorney with **Hanson, Bridgett, Marcus, Vlahos and Rudy** in San Francisco. Or if another physician admits the patient to the hospital, the "concierge" doctor may promise to come visit the patient in the hospital every day, even if he or she isn't the attending physician. You can legitimately charge for these types of services, Jergesen says.

Gray area: If your physician promises to provide more access to patients than a normal physician would provide, you could argue that Medicare doesn't pay for that service, says Miller. For example, the physician could charge for access via the Internet, or being directly available via phone.

Also, the physician could promise same-day appointments, returning calls within two hours, or being personally available via phone 24 hours a day, says Jergesen. The physician might argue that to provide these services, she's had to reduce

her patient census.

But the state health departments of New York and New Jersey have issued opinions stating they already expect physicians to take care of patients 24 hours a day and seven days a week, notes Marquis. "And people argue that Medicare expects its patients to get that type of service." Most people, however, won't be able to reach their own physician during off hours. The best you can expect normally is another doctor who is taking calls for your physician.

The loophole: Physicians can "opt out" of the Medicare program and then they needn't worry about legal issues with providing concierge care, notes Jergesen. Opting out doesn't just mean not participating with Medicare, it means not accepting Medicare reimbursement at all - your patients can bill Medicare themselves if they want to.