Part B Insider (Multispecialty) Coding Alert

Compliance: Expect to Be on the OIG's Radar If You Rely Heavily on Upcoding to Make Ends Meet

Strong documentation will help with damage control and the FCA.

When it comes to coding and billing, tipping the scalesin your favor will land your practice in hot water. Not only does this common error cause financial strife, it is a violation of the Federal Claims Act (FCA).

Be Wary of Repeat Overbilling Issues

What is upcoding? Upcoding happens when a physician misuses a billing code with a higher reimbursement rate instead of a code for the level of service given. The reason the OIG continues to crack down on this practice is due to the heavy toll it brings to the improper error rate and the output of overpayments from CMS.

Look at the CERT Results

The latest CMS Comprehensive Error Rate Testing (CERT) highlights the impact upcoding had on Medicare last year. With over $2.26 billion paid out erroneously to just Part B providers in 2016 alone due to upcoding, it's easy to see why the OIG is concerned. See the upcoding stats for all areas of Medicare here: https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/CERT/Downloads/AppendicesMedicareFee-for-Service2016ImproperPaymentsReport.pdf.

Paybacks required. Accidents do happen, but you still have to pay the piper. CMS considers upcoding an abuse, and therefore, it falls under the FCA.

"Upcoding frequently subjects providers to recoup. If the medical record does not support the service(s) billed, CMS can certainly recoup the funds paid to the provider," explains **John E. Morrone, Esq**, a partner at Frier Levitt Attorneys at Law in Pine Brook, NJ. "Systematic upcoding will likely result in investigation and prosecution under the False Claims Act."

Documentation counts. The OIG isn't picky. They don't prey on certain codes or specialties and if your notes don't prove the medical necessity for the code used, you're going to find yourself in trouble. Because "intentional deception" lies at the top of the Medicare fraud bracket, the OIG intends to pursue upcoding offenders with vigor.

With an upcoding charge, your documentation is key. It proves that the code used was correct and is a record of your time with your patient.

Scenario: Take E/M coding for instance. If you insist that all of your patients are complex cases and therefore deserve reimbursement for 99215 (Office or other outpatient visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components...), check the documentation again and make sure you're right. The code that you select is typically driven by the medical necessity of the visit, but the required elements of the visit still need to be documented, or you can't bill.

Remember: If you don't have the history, exam and medical decision-making to support a particular code, you may be able to bill based on time if you meet the criteria. You will need to document the total time spent, as well as the time spent counseling or coordinating care (which should make up 50 percent or more of the visit), and what was discussed.

Avoid Cut-and-Paste Rush Jobs

Sometimes practices accidentally upcode services when rushing through the cut-and-paste option in their EHRs. If it happens frequently, the issue might look fishy to CMS.

"The cut-and-paste function allows providers to enter relevant information into a patient's medical record more efficiently, which saves time on typing and leaves more time for patient care," explains **Michaela D. Poizner, Esq** of Baker, Donelson, Bearman, Caldwell & Berkowitz in Nashville, TN.

"But providers have to be careful that they don't accidentally copy inaccurate information into a patient's record," Poizner adds. Misuse of the copy-paste function can lead to erroneous health records, redundancy, upcoding, and even false claims.

Example: The progress notes from a previous visit are copied and pasted into the current visit record. The procedures were similar, so the physician feels the copying is warranted. However, if done haphazardly, the physician could copy previous services from the past visit that aren't performed in the current visit. In this case, the copy-paste action could create false documentation, which could lead to upcoding and to false claims.

Tip: "To practice responsible cutting and pasting, slow down," Poizner advises. "Double check that the copied text is going into the correct patient's record, and read the text carefully to make sure that it's accurate for the particular patient and doesn't leave out important information."

Consult the FCA for the Details

If you're found guilty of upcoding, the financial damages can be steep. In addition to paying back what you were paid out for the upcoding blunder, you may have to shell out some cash to cover your fines. "Civil penalties for violating the FCA may include fines of up to three times the amount of damages sustained by the Government as a result of the false claims plus up to $21,563 (in 2016) per false claim led," a Medicare Learning Network fraud and abuse factsheet from October 2016 states.

Criminal record: Though the FCA fines are a civil penalty, the mandate also includes a statute for criminal offenses, which carries with it substantial fines and possible imprisonment for individuals and entities found guilty.

To read a detailed overview of the FCA and other federal healthcare fraud laws, visit https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/fwa-laws-factsheet.pdf.