Part B Insider (Multispecialty) Coding Alert

CONSULTS: Report And Request Aren't Enough For Consults Without Medical Necessity

Use of modifier 25 exposes that doctor knew he flouted the rules

If you're worried about running into trouble for your consult billing, then a recent case could be an important bellwether. A False Claims Act case against a Las Vegas critical care doctor can go to trial the **U.S. District Court in Nevada** ruled (2:04-cv-00859-PMP-PAL).

Critical care physician **Eugene Chen** was in the habit of billing for both a catheterization and a top-level consultation on the same day. An investigation by **Western Integrity Center** found that most of the 800 consults Chen billed were the highest level, and an audit of top-level consults found that all but one (which should have been the lowest level) shouldn't have been billed at all.

When Chen received a consult request from other physicians, it usually only asked for him to perform certain procedures, such as catheterization. When Chen wrote a consult report back, it usually only contained information that he'd gotten from the patient's chart, such as medical problems, allergies, or ventilator settings.

In one case, the consult request said, "Have Dr. Chen insert a central line."

The crux: The U.S. sued Chen under the False Claims Act, and Chen moved to dismiss the suit because his billings had met the definition of a consult: He'd received a request and provided a report back. But the court ruled that "a reasonable jury" could well decide the doctors didn't need Chen's advice because they already knew the patients needed catheters. Also, Chen's services didn't deserve the 25 modifier because he only examined the patients enough to provide a catheter to them.

Caught red-handed: Chen argued he didn't know he was violating the law. But the court said a jury could reasonably find that his routine use of modifier 25 to get around Medicare's restrictions could prove he really did know the rules.

Takeaway: Make sure consult requests ask your physician to answer some question, and that the physician answers it in his or her report.