

## Part B Insider (Multispecialty) Coding Alert

### Rash of Subpoenas Hits Coders Hard - Managed-Care Plans Seek Coding Nitty-Gritty

Are you now, or have you ever been, an upcoder?

That's what the managed-care industry seems to want to know. The health plans defending themselves against a lawsuit filed by physician groups demanded a veritable warehouse full of paper from coders and coding experts.

The subpoenas from eight of the biggest managed-care companies seek information on coding seminars and consulting services provided by coding experts. They cast as wide a net as possible and ask for documents about "the use of CPT Codes or CPT modifiers to increase, maximize or optimize payments for medical services." (The Coding Institute, which is affiliated with Part B Insider, also received one of these subpoenas in connection with its publications and seminars.)

The subpoenas appear to seek evidence that coding experts are "telling doctors to upcode and how to game the system," says **Barbara Cobuzzi**, president of Cash Flow Solutions Inc. in Lakewood, N.J. The managed-care payers hope to sidestep allegations of underpayments to doctors by claiming that "consultants are telling doctors to abuse the managed-care industry." In reality, consultants aren't teaching doctors to game the system, just to survive in it, she says.

Even though the managed-care suit is civil litigation, any allegations of deliberate upcoding could lead to criminal actions down the line, Cobuzzi says. And if a court decides doctors are upcoding with managed-care payers, the same issues will apply with Medicare. But Cobuzzi is confident the documents she's submitted in response to the subpoena will only show that she and others have taught doctors correct coding.

It's not true that the subpoenas are aimed at uncovering upcoding, says **K. Lee Blalack**, the attorney at O'Melveny & Myers in Washington who served them. Much of the physicians' lawsuits revolves around questions of whether a particular doctor has "properly described the services for which he's seeking reimbursement when he codes those services." To answer that question requires a lot of information on proper coding practices, Blalack says. "In order to evaluate the merits, we're simply seeking context," he says.

If the managed-care plans wanted evidence of wrongful coding and billing, they need only look to numerous reports by the General Accounting Office and HHS Office of Inspector General, Blalack adds. Since the managed-care defendants process Medicare claims as carriers, Medicare is very much a part of this suit, he says.

Aetna already settled the physician lawsuit last May, three years after it was filed, and Cigna is working on a settlement now, according to **Kent Jarrell**, a spokesman for the remaining defendants.

Two different hearings on whether the trial court should have granted class-action status to the plaintiff doctors are coming up, Jarrell says.

"Claims must be managed, monitored and, if necessary, corrected," Jarrell says. "The only way to do that, with billions of claims every year, is through computer software, which is required by the federal government to monitor its claims."

Meanwhile, Cobuzzi will spend thousands of dollars to comply with the subpoena, which seeks every document relating to contract negotiations, seminars and workshops, coding services and software. "They're asking for every piece of paper."

"One thing that this case doesn't have a shortage of is documents," Blalack observes wryly.

