

## MDS Alert

### ICD-10: Not Planning to Transition to ICD-10 as of Oct. 1, 2013? You Might Be Liable for Fines, CMS Reps Say

**Plus: CMS officials are considering how to handle dates of service that span the pre- and post-ICD-10 implementation dates.**

If you think the ICD-10 codes won't apply to your Medicare claims as of Oct. 1, 2013, CMS has news for you. Not only will your claims be denied if you continue to submit ICD-9 codes to Medicare after that date, but you could face fines.

CMS representatives shed light on this and several other issues during the agency's recent "ICD-10 National Provider Teleconference." Here are five FAQs.

**Question 1:** How will CMS handle claims that span from before Oct. 1, 2013 through dates after Oct. 1, 2013? Should the practitioner use ICD-9 or ICD-10 codes for these claims?

**Answer:** CMS is mulling how to handle this situation, but hasn't yet arrived at a firm decision. "We are getting very close to finalizing our decision for all claim types, including professional claims, supplier claims, and the various types of institutional claims," said CMS' **Sarah Shirey-Losso** during the call. "Some claims will continue to use the discharge date, some will use the 'from' date, and some may be required to be split," she said.

**Stay tuned:** CMS is currently working on a final decision, which the agency will issue in a "Change Request" document this summer.

**Date of service issue:** If, however, you submit a claim for a single date of service, you'll submit ICD-9 codes for dates of service through Sept. 30, 2013, and ICD-10 codes for dates of service Oct. 1, 2013 and thereafter. **For instance:** If you send in a claim on Oct. 15, 2013, but the date of service is Sept. 1, 2013, you'll still use ICD-9 codes.

**Question 2:** Will workers' compensation insurers still use ICD-9, even after the rest of the industry transitions to ICD-10 after Oct. 1, 2013?

**Answer:** The answer to that is unclear, but CMS has heard murmurs that workers' comp insurers will switch over to ICD-10. "We've heard anecdotally that even though they're not required to transition to ICD-10, that many of them are planning to, just because it's more practical to do so and they see that it's the way the rest of the industry is going," said CMS' **Denise Buenning, MsM**, during the call.

**What about Medicaid?** You can rest assured that Medicaid insurers will be transitioning to ICD-10 as of the Oct. 1, 2013 date, Buenning said. CMS is working with Medicaid administrators to ensure that they are compliant by the implementation date, she noted.

**Question 3:** What are the penalties for entities that are covered under HIPAA who choose not to use ICD-10 codes as of Oct. 1, 2013?

**Answer:** Your claims will be denied -- and you technically could face fines since use of the ICD-10 codes falls under the HIPAA transaction code set regulations, CMS reps noted.

**Denials:** "From a practical standpoint, as of service dates of Oct. 1, 2013, if you don't use ICD-10 codes, most likely your claims will be returned and you will be asked to transition them to ICD-10," Buenning said.

**Fines:** "The penalties are the same penalties that any HIPAA entity would be subject to," Buenning noted. "I think most of

you are familiar with the ongoing HIPAA transaction codeset penalty that calls for a maximum of \$25,000 per covered entity per year, but the HITECH legislation of last year actually upped those transaction and codeset penalties, and they can be as much as \$1.5 million per entity per year. So obviously it behooves everybody -- Medicare and Medicaid inclusive -- to make sure we are compliant with these ICD-10 codes by the Oct. 1, 2013 date," she added.

Question 4: The Medicare local coverage decisions (LCDs) currently list the payable ICD-9 codes that correspond to all Medicare-payable procedures. Will contractors issue updated LCDs to the public prior to the Oct. 1, 2013 implementation date that show the payable ICD-10 codes for the procedures?

Answer: The answer to that isn't yet crystal clear. "The LCDs will be translated because they will need to be translated, [but] as it relates to having them available to the public prior to the implementation date, that I'm not sure of, because we are working fast and furious on all of our ICD-10 implementation efforts," said CMS' **Lisa Eggleston, RN, MS**, during the call.

Question 5: When will CMS finalize the ICD-10 code set?

Answer: As of this October, you'll see an ICD-10 code set that's pretty close to how the final will look.

"The final version will be the one that will be implemented in FY 2014 [issued on Oct. 1, 2013]," said CMS' **Pat Brooks, RHIA**. "So what we're doing each year we update it, we're telling you the current version we're working from. We will have the last major update in FY 2012 [which will be implemented Oct. 1, 2011], but we're warning you that we could add some more codes because of new technology and new procedures, but each year has a version and that's the official version for the current year."

Editor's note: This article originally appeared in The Coding Institute's Part B Insider. For subscription information, call 1-800-508-2582.