

COMPLIANCE IN THE AGE OF ELECTRONIC MEDICAL RECORDS

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Physicians are facing unprecedented scrutiny in the submission of claims. For example, with respect to Medicare claims, not only do Medicare Affiliated Contractors (“MACs”) (or Medicare Carriers and Intermediaries) conduct their own audits, but also Medicare’s Recovery Audit Contractor program is now operational nationwide (and has recently been expanded to include Part C and Part D claims), and Zone Program Integrity Auditors (“ZPICs”) (or Program Safeguard Contractors (“PSCs”)) are conducting nationwide benefit integrity audits. With respect to Medicaid claims, Medicaid Integrity Contractors (“MICs”) are actively auditing claims, and the RAC program is expanding to Medicaid claims as well. Physicians must be cognizant of this increased claims scrutiny and conduct themselves accordingly, with an increased focus on compliance. Notably, certain compliance issues are heightened with the use of electronic medical records. This article will set forth compliance recommendations for physician practices, with a particular focus on the compliance issues raised by electronic medical records.

1. Physician practices must adopt and implement effective compliance programs.

While previously, the adoption and implementation of a compliance plan was “voluntary” for physician practices, The Patient Protection and Affordable Care Act of 2010 (“PPACA”), mandates that providers and suppliers adopt a compliance program containing certain core elements as a condition of Medicare enrollment. CMS has proposed that physicians’ compliance plans contain the elements described in the U.S. Federal Sentencing Guidelines Manual; however, the required elements have not yet been finalized, but will be specified by future rulemaking.

2. Understand your electronic medical record.

Auditors and medical reviewers routinely deny claims because an item or service is found not to be medically necessary. It is essential that when a physician documents a service performed, such documentation must establish for the reviewer the medical necessity for the service rendered.

There are special compliance issues that arise with respect to the use of electronic medical records, particularly with respect to issues of medical necessity. For example, many electronic medical records have built in “time savers,” such as self populating fields that insert a patient’s medical history or procedural history into each record. These time saving devices ultimately may hurt a provider if not used correctly, should the provider be subject to an audit. Auditors and claim reviewers may deny claims for medical necessity if it appears that the documentation is not tailored to the service performed, but is merely a template. Each record should be distinct from the next. Additionally, auditors and claim reviewers may deny claims if they find that the medical records associated with the service or procedure are internally

inconsistent. For example, this office has seen audits where claims are denied because the medical record states in one area, “patient has no complaints of pain,” but in another area states, “patient presents with severe pain.” Providers using electronic medical records must ensure that they understand the capabilities of the software, have knowledge regarding which fields self-populate, and tailor each record to the patient’s condition at the time of assessment.

3. *Documentation is key.*

In order to establish the medical necessity for the service performed, documentation must be thorough. According to the Office of Inspector General (“OIG”) Compliance Program for Individual and Small Group Physician practices, “[O]ne of the most important physician practice compliance issues is appropriate documentation of diagnosis and treatment. Physician documentation is necessary to determine the appropriate medical treatment for the patient and is the basis for coding and billing determinations.”

Keeping in mind that auditors and claim reviewers oftentimes are nurse reviewers without specific expertise in a physician’s practice area, it is essential that documentation paint a picture for a reviewer of medical necessity, keeping in mind compliance issues specific to electronic medical records that may arise. Each note should establish the medical necessity for the service provided.

4. *A physician is responsible for knowing payor policies.*

Physicians are legally responsible for knowing policies regarding the services and procedures they perform, including policies on documentation. With respect to Medicare claims, pursuant to federal regulations, a physician will be deemed to have knowledge of a Medicare coverage policy if a MAC has provided actual notice to the physician regarding coverage; if CMS has provided notices related to the subject service (*e.g.*, Manual issuances, bulletins or other written guides); and/or if a National Coverage Decision has been adopted with respect to the service.

Many physicians believe that payor policies address billing and coding issues only; this simply is not true. Physicians must keep in mind that Medicare, Medicaid and other payor policies address not only billing and coding practices but also documentation. As a best practice, physicians should set up a system to obtain, distribute, provide education regarding and maintain information relevant to the services and procedures provided. In addition, if electronic medical records are used, the electronic medical record template should be customized to address any policy guidelines adopted by Medicare, Medicaid or any other relevant payor with respect to the services provided by the physician. Each physician record should meet the following guidelines:

- The record should be complete and legible;
- Each encounter should include the reason, relevant history, exam findings, prior test results, assessment, clinical impression or diagnosis, plan of care, date and identity of the observer;
- If not documented, the rationale for ordering a test or service should be easily inferred, and past and present diagnoses should be accessible.

5. *A physician is legally responsible for claims submitted under his or her billing number.*

Physicians are legally responsible for all claims submitted under their billing numbers. This is true even if a physician uses an in-house or outside coder and biller for the submission of claims. Accordingly, physicians must ensure that they stay educated and apprised of billing activities taken on their behalf.

Conclusion

All physicians must be cognizant of the increased scrutiny under which claims are reviewed. In the highly-regulated health care environment, physicians are well advised to keep compliance activities in the forefront and keep the tips outlined herein in mind when submitting claims.