

Conducting an Internal Investigation of a Claims Based Allegation of Non-Compliance

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Compliance Hotline Call

"I'm an RN in the Cardiology Department. I'm really concerned about making certain that my identity will be kept confidential, so I'm not going to provide my name. We had a patient come in this morning very upset. He was here for a pre-operative visit for a valve replacement that Dr. Smythe scheduled last week after the patient came in to the ED short of breath. The surgery was supposed to be in two days. The patient said he had obtained a second opinion from another cardiologist in town who said there was no problem with his heart -- and he cancelled the procedure. The patient's wife said she planned to call the Medicare fraud hotline. I thought you should know."

Additional Related Concerns

The Chief Medical Officer approached you last week with concerns that had been brought to his attention, that included cardiac catheterization volumes significantly in excess of national norms for Dr. Smythe's cardiology group, and RVU production in the group that exceeded by almost 2x what had been projected when FMV opinions were obtained for the practice's compensation package. The hospital employed the cardiology group 18 months ago as part of a strategy to align physicians as employees. The cardiologists are paid on a base plus bonus pool formula that is based on RVU production.

The Director of Revenue Cycle also sent you a note last week about an uptick in cardiac catheterization lab denials. In her initial look she has identified some coding issues that she believes are causing the problem and wants to discuss them with you.

What Would Be Your Primary Concern?

[polling question]

- Possible issue of medical necessity in a planned surgery and cardiac catheterization procedures
- Very "productive" physicians and possible issues with the cardiology compensation formulas
- Possible coding/billing issues and timing for repayment

Measuring Compliance Program Effectiveness: A Resource Guide (March 27, 2017)

considerations for assuring effective investigation and resolution processes

- Guidelines/Policies & Procedures for Investigations
- Training, Professionalism and Competency of Investigators
 - "How to" training for compliance staff
- Independence of Investigators
 - Processes & criteria for use of outside experts, counsel & consultants
- Involvement of Legal Counsel & Privilege Issues
- Quality, Consistency and Completeness of Investigations
 - How does the organization assure these things? Use of root cause analysis to evaluate results.
- Content, Completeness and Maintenance of Investigation Files
- Tracking, Trending and Reporting on Investigation Outcomes
- Escalation of Investigations
 - When are senior management and/or board advised re: existence and outcomes of investigations?
- Timeliness of Investigation and Response
 - Do any findings require external reporting or return of overpayments by required deadlines?
- Corrective Action Plans/Remedial Measures
 - Monitoring of results.



Have You Provided Any Formal Investigation Training for Internal Investigators?

[polling question]

- Yes
- No

Planning the Investigation – Privilege Issues

- Coordinating with the peer review process
 - Implications of peer review privilege
 - Is peer review only an adequate evaluation process?
 - Issues to watch for
- When should counsel be involved?
 - The role of attorney-client privilege
 - When should counsel be involved?
 - Working effectively with counsel in an investigation

What Best Describes Your Organizational Counsel's Role in Internal Compliance Investigations

[polling slide]

- Counsel directs all internal compliance investigations
- Counsel directs some internal compliance investigations
- Counsel is sometimes a member of the internal investigation team
- Counsel is consulted from time to time by investigators
- Counsel receives reports of investigation outcomes

When Would Your Compliance Function Involve Counsel in This Investigation Matter?

[polling slide]

- Counsel would direct & help plan the investigation from the inception
- Counsel would be involved after initial findings seem to corroborate allegations/concerns
- Counsel would be involved when/before external experts are consulted
- Counsel would be contacted and involved once investigation/audit reports are available
- Counsel would likely not be involved in this matter

Planning the Investigation

- Communication with the nurse
 - Confirming receipt of the nurse's concerns
 - How/what do you communicate with the nurse as things move forward
- Communications with the Chief Medical Officer and the Director of Revenue Cycle
- When/What do you communicate to the cardiology group?

Planning the Investigation

- What should the investigation include?
 - Methods for evaluating concerns about high RVU production
 - Methods for evaluating medical necessity concerns about the surgery
 - Evaluating coding concerns: Are these potentially related to the other suspected issues?
 - What else should the investigative plan include?
 - Should you use external resources to assist with components of the investigation?
 - What factors are relevant in making this decision?

The Investigation Plan

- Organization's General Counsel in directing the investigation
- Interviews: reporting nurse, Director of Revenue Cycle (and staff who manage the denials), and (eventually) Dr. Smythe, (any others?)
- Initial evaluation of denied claims by internal (compliance and revenue cycle) staff
- Physician review of a probe sample of cardiac catheterization claims and of the surgery patients' files (in-house or outside expert?)
- Documentation and coding review of a probe sample of cardiac catheterization lab claims (in-house or outside expert?)

Initial Investigation Findings

- Medical necessity for valve replacement is inconclusive. There were some indicators that procedure was necessary – but additional testing should likely have been done before procedure was scheduled.
- High cardiac catheterization utilization is largely driven by two physicians in the group of ten physicians. Medical review of these physicians' charts identified that 40% of procedures being performed are borderline (i.e., not well supported by indicators of appropriate severity to justify the catheterization procedure).
- The internal review of denials and external coding review found that, for many cases where left and right heart cath (93460) were coded, documentation didn't clearly indicate that the right heart cath was performed. Coding left and right as opposed to just left heart cath resulted in an additional payment from Medicare of approximately \$573 per case. The review also found that renal angiography (75722 or 75724) was billed on many cases when the renal artery had not been catheterized, and a complete renal angiogram had not been performed, resulting in additional Medicare payments of approximately \$652 per case.

Has Your Primary Concern Changed with Initial Findings?

pooling question

- Possible issue of medical necessity in a planned surgery and cardiac catheterization procedures
- Very "productive" physicians and possible issues with the cardiology compensation formulas
- Possible coding/billing issues and timing for repayment

Next Steps in the Investigation Process

- Follow up on the (inconclusive) surgery findings
 - What more could/should be done to address this issue?
- Follow up on cath utilization findings
 - What concerns are at risk with our initial findings?
- Follow up on coding error findings
 - What actions could/should be taken to address the coding errors?
- Coordination with peer review process at this point
 - How/when should you share information with the medical staff peer review process?

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Making Decisions About Repayment, Self-Disclosure and other Remedial Matters

- "Report & Return" rules and impact on this matter
 - How/when do we consider extrapolating our results to determine a payback?
How many claims would our extrapolation need to be based on?
 - How far back do we need to look?
 - Who do we report this to? How do we make that decision?
- When should self-disclosure be considered?

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How Would You Manage the Reporting/Self-Disclosure Question?

polling question

- No repayments are necessary: documentation issues only and medical necessity is a matter of medical judgment
- Repayments on coding issues only: medical necessity is a matter of medical judgment
- Repayment on coding and medical necessity issues
- Repayment on coding issues, self-disclosure of medical necessity concerns
- Self-disclosure of all issues

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Questions & Discussion


