Audit and Reimbursement Challenges in Changing Health Care Environment

HCCA Delaware Valley
June 3, 2016
Robert F. Bacon, MHA
VP & Billing Compliance Officer

Disclaimer

- Opinions expressed are my own and do not represent any guarantees, warranties or endorsements by the University of Pennsylvania or its Trustees
Emerging issues in the field of Billing Compliance
  - Government Audits
  - Merger & Acquisitions
  - Telemedicine
  - Electronic Medical Record
- ICD-10
  - Adverse Implications

Penn Medicine offers comprehensive clinical services throughout the greater Philadelphia region
- Practice Plans
  - Clinical Practices of the University of Pennsylvania
  - Clinical Care Associates
- Hospitals
  - Chester County Hospital
  - Hospital of the University of Pennsylvania (the nation's first teaching hospital)
  - PENN Presbyterian Medical Center
  - Pennsylvania Hospital (the nation's first hospital)
  - Lancaster General Health
- Home Care & Hospice Services
  - PENN Care at Home / PENN Home Infusion Therapy
  - Wissahickon Hospice
Penn Medicine

**Regulatory Environment**

Federal & State Authorities
- Office of the Inspector General
- Department of Justice
- Centers for Medicare & Medicaid Services
- Office of the State Attorney General

- Anti-Kickback Statute
- Pennsylvania False Claims Act
- Federal False Claims Act
- Beneficiary Inducement Law
- “Stark” law: Physician self-referral law
- Mail Fraud

---

Penn Medicine

**Pace of Change with Post Payment Audits Continues to Accelerate**

<table>
<thead>
<tr>
<th>Who</th>
<th>What</th>
</tr>
</thead>
<tbody>
<tr>
<td>RACs</td>
<td>Recovery Audit Contractors</td>
</tr>
<tr>
<td>MACs</td>
<td>Medicare Administrative Contractors</td>
</tr>
<tr>
<td>PSCs</td>
<td>Program Safeguard Contractors</td>
</tr>
<tr>
<td>ZPICs</td>
<td>Zone Program Integrity Contractors</td>
</tr>
<tr>
<td>CERT</td>
<td>Comprehensive Error Rate Testing</td>
</tr>
<tr>
<td>MIP</td>
<td>Medicaid Integrity Plan</td>
</tr>
<tr>
<td>MIG</td>
<td>CMS Medicaid Integrity Group</td>
</tr>
<tr>
<td>MICs</td>
<td>Medicaid Integrity Contractors</td>
</tr>
<tr>
<td>MIGs</td>
<td>Medicaid Inspector Generals</td>
</tr>
<tr>
<td>PERM</td>
<td>Payment Error Rate Measurement</td>
</tr>
<tr>
<td>OIG</td>
<td>Office of Inspector General</td>
</tr>
<tr>
<td>DOJ</td>
<td>Department of Justice</td>
</tr>
<tr>
<td>FBI</td>
<td>Federal Bureau of Investigation</td>
</tr>
</tbody>
</table>
Emerging Compliance Risk

- Implications of data mining
  - “Pay and chase” is yesterday’s news
  - Common work file
  - Government audits predicated upon results of data mining
  - Requirement for providers to self audit with presumption that all reported data is incorrect

---

Fraud and Abuse Control Program

- Since 2010, DHHS, OIG, CMS, DOJ have partnered to form stronger relationships to shift from the conservative ‘pay and chase’ approach toward utilizing more elaborate anti-fraud tools

- Fiscal Year 2015, the government recovered 2.4 billion to replenish the Medicare Trust Funds

- Through the Federal False Claims Act, the DOJ has obtained 1.9 billion in settlements and judgments

- HHS OIGs continues to use data analysis, predictive analytics, trend evaluation, and modeling approaches to better analyze and target oversight of HHS programs
The Massachusetts Board of Registration in Medicine proposed a new rule that would require:

- Surgeons needing to document each time they enter and leave the operating room.

M&A Continue at a Steady Rate

<table>
<thead>
<tr>
<th>Hospital &amp; Health System M&amp;A Activity</th>
<th>Number of Hospitals Part of a Health System</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 64 95 96 98 95</td>
<td>2,668 3,183</td>
</tr>
</tbody>
</table>

Partnerships and Affiliations

**Merger or Acquisition**
Formal purchase of one organization’s assets by another, or the combination of two organizations’ assets into a single entity.

**Clinically-Integrated Hospital Network**
Collection of hospitals contracting jointly in order to support improved coordination, outcomes; modeled after physician CI networks.

**Accountable Care Organization**
Independent entity, owned by one or several independent organizations, that accepts risk-based contracts and distributes shared savings.

**Regional Collaborative**
Flexible umbrella structure, often encompassing many independent organizations of similar geography, that may serve as foundation for further integration.

**Clinical Affiliation**
Typically bilateral agreement to cooperate around a particular initiative or service line; may involve local or national partners.

---

**Due Diligence Auditing**

- **Compliance must have a “seat at the table”**
  - Complexities related to antitrust and protected confidential information such as market share
  - May need to coordinate through external audit firms with restricted access to data
  - Address problems prior to final transaction
- **Critical need to gather information**
  - Implications to terms and market value such as upcoding or downcoding
Due Diligence Auditing

- Compliance questionnaire
  - Does entity maintain a compliance program?
    - If yes, obtain and review
  - Government investigations and audits
  - Federal exclusion list
  - Internal billing reviews and related outcomes
  - Utilization of advance practice providers?
  - Paper or electronic medical records?

Scope of Due Diligence Audit

- Transactional
  - Medical record review
  - Billing and credit balances
  - Prompt (60 day) refunds
- Data mining
- Representations and warranties
- Systems of internal controls
Data Mining and Due Diligence

- Referral patterns
- Copy of service analysis
  - If physicians, need micro and macro
- Timely filing
  - Cost reports
  - Meaningful use attestations

Data Mining

- Identify risk areas such as providers billing patterns compared to established benchmarks
  - Analyze external data (e.g. Faculty Practice Solution Center) and internal practice patterns
  - Concentrate on high level E&M services rather than full random sample
- Utilize external data for hospitals
  - Program for Evaluating Payment Patterns Electronic Report (PEPPER)
  - MedPar (Medicare claims data)
  - Medicare Fee For Service Improper Payments Report (DHHS)
- Review Internal denial reports for medical necessity
Successor Liability

- Inherit serious regulatory liabilities
  - False Claims Act Liability
- Risk of corporate integrity agreement
  - Statutory
  - Medicare
  - Contractual
- Indemnification clauses
  - Extent of uncovered problem versus agreed upon financial cap’s

Public Awareness

- Consumer awareness & media attention
- Reputational risk

Concurrent surgeries come under new scrutiny

Hospitals across the country have faced controversies over doctors double-booking surgeries, but the issue is getting national attention only now.
Who can access the Medical Record

- Government
- Payers
- Internal Auditing
- Legal Personnel
- Physicians & Other Medical Staff
- Patients & Families

Electronic Medical Record

- All rules apply
  - No different than paper
- Integrity
  - Do not share sign-on and password
- Credibility
  - Copy & Paste
- Complete, accurate, timely
  - Audit trail
Cloned defined:
- Exact wording or similar to previous entries
- Documentation is exactly the same from patient to patient

Default data:
- May document a more extensive history and physical examination than is medically necessary
- Differentiation of new findings or changes in a patient’s condition could be overlooked

Documentation must reflect:
- Condition necessitating treatment
- Treatment rendered
- And if applicable the overall progress of the patient to demonstrate medical necessity

• **Documentation and Performance** should be consistent with patient’s presenting problem and provider’s clinical judgment
• Ensure documentation reflects services provided during the encounter
Perils of EMR Documentation

- Copy and paste is a useful tool if utilized correctly
  - Exercise diligence and ensure documentation reflects services rendered today
  - Remove all documentation that does not apply
- Each visit is independent and should be supported by chart documentation reflective of care given today
- Consider unintended consequences (e.g., medical-legal)

Innovations In Medicine & Technology Versus Government Barriers

- Laws of supply & demand
  - Managing scarce resources & improving quality of life
- Significant government imposed billing obstacles associated with telemedicine restricts use and access
  - Geographical constraints;
  - Credentialing/Privileging; and,
  - Licensure
Statutory Barriers to Telemedicine

- Geographical constraints
  - CMS restricts coverage to rural health professional shortage areas
  - Metropolitan statistical areas excluded
- Physicians must be credentialed and hold privileges to practice in the hospital where patient is located
  - Risk associated with delegated credentialing
- Physicians must be licensed to practice in the state
  - Professional liability exposure

ICD-10 Code Structure → Specificity

- Clinical Modification will allow for Expansion
  - New alpha – numeric classification
- Significant changes to the diagnosis code sets
  - New diseases, concepts, medical knowledge
  - Distinctions for ambulatory and managed care encounters
- Providers will need to document with greater specificity

<table>
<thead>
<tr>
<th></th>
<th>ICD-9 –CM</th>
<th>ICD-10- CM</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Format</strong></td>
<td>3-5 characters</td>
<td>3-7 Characters</td>
</tr>
<tr>
<td><strong># of Codes</strong></td>
<td>~14,000</td>
<td>~68,000</td>
</tr>
</tbody>
</table>

Alpha (every letter except U)  
Numeric  
Numeric or Alpha (every letter except U)  
Category  
Category, anatomic site, severity  
Extension
Revisions to National Coverage Decisions (MLN MM9252)

- CMS listing of ICD-10 diagnosis & procedure codes specific to the 26 Medicare NCDs

ICD-10: Adverse Implications

- Potential challenges with National Coverage Decisions (NCDs) and Local Coverage Decisions (LCDs)
  - Manual revisions under clinical indications and limitations ➔ potential that applicable diagnoses codes may not have been included
  - Established edits and associated diagnoses codes distributed to MACs may not be all inclusive
Case Study: Extracorporeal Photopheresis (NCD 110.4)

**ICD-9**
- 202.10 Mycosis fungoides, unspecified site, extranodal and solid organ sites
- 202.20 Sézary's disease, unspecified site, extranodal and solid organ sites

**ICD-10**
- C8400 Mycosis fungoides, unspecified site
- C8409 Mycosis fungoides, extranodal and solid organ sites
- C8410 Sézary disease, unspecified site
- C8419 Sézary disease, extranodal and solid organ sites

Case Study: NCD for Adult Liver Transplantation (260.1)

Established an edit associated with the transplant procedure codes (for hospital inpatient claims ICD-10 PCS OFY00Z0, Z1 & Z2) into their claim editing program requiring one of the following specific diagnosis codes:

- C22.0 Liver Cell Carcinoma
- K72.10 Chronic hepatic failure w/o coma
- K72.11 Chronic hepatic failure w/coma
### Index Entry | ICD-9-CM | ICD-10-CM | NCD Determination
--- | --- | --- | ---
ESLD (end-stage liver disease) | 572.8 | K72.90 | Not covered
Liver/hepatic failure | 572.8 | K72.90 | Not covered
Liver/hepatic failure - chronic without coma | n/a | K72.10 | Covered
Liver/hepatic failure - chronic with coma | n/a | K72.11 | Covered

### AMC Audit Challenges
- “Cutting Edge” of medicine
  - Introduction of new procedures &/or techniques that do not agree with CPT code descriptions (e.g. approach using arthroscopy versus open fashion as described in CPT)
  - Use of unlisted codes
- Technological advances in medicine
  - Extended timeframe for development of new codes
AMC Audit Challenges

- Tertiary/quaternary care institutes
  - Patient acuity
- Teaching Physician New Rules (TPNR)
  - Required attestation & tethering language
  - Service fully documented by resident but insufficient documentation by teaching physician (e.g. demonstrate participation & management)

Summary

- Material increase in external audits by government and private payors
- Critical need for compliance to “have a place at the table” for due diligence
- Risk associated with public awareness
- Innovations in medicine and technology subject to government barriers such as telemedicine
1. Did you hear about the guy whose whole left side was cut off? He’s all right now
2. There was a sign on the lawn at a drug rehab center that said ‘Keep off the Grass”
3. He was wheeled into the operating room, and then had a change of heart
4. The patient has no history of suicides
5. Patient has two teenage children, but no other abnormalities

6. Discharge status: alive but without permission
7. Rectal exam revealed a normal size thyroid
8. He had a left-toe amputation one month ago. He also had a left-knee amputation last year
9. The patient was in his usual state of good health until his airplane ran out of gas and crashed
Medical Humor

10. The worst time to have a heart attack is during a game of “charades”