Fraud Case Study

Crystal Graening

University of Mary

Medicare Billing Violation

In my opinion, a Medicare billing violation has occurred. Sam the nurse practitioner recalled that a NP's time is reimbursed at 80% of the charge. A physician, on the other hand, is reimbursed at 85% of the charge. However, this office, has always billed at the higher percentage of 85, regardless of which provider, an NP or physician. While Medicare Part B identifies that the 85% is the reimbursement for non-physician practitioners who are supervised by physicians, in this case, the physician is not present and not supervising (CMS, 2016), thus it cannot be reimbursed at the 85%. As Medicare Part B states, the supervising physician "does not have to be physically present in the treatment room while the service is being provided, but [they] must be present in the immediate office suite to render assistance if needed" (CMS, 2016, p. 2). The billing clerk's statement of it always being done that way, referring to the 85%, identifies that a billing violation has occurred, because regardless of whether a physician is present or not, the 85% reimbursement is being coded.

This would be an example of upcoding, which is a type of fraud in which the provider has billed "for a more complex service or procedure than was actually rendered, and/or diagnosing the patient with a costlier condition than was present" (McGee, Sandridge, Treadway, Vance, & Coustasse, 2018, p. 148). The reimbursement for a physician is higher, which falls under a more complex service being rendered if an NP instead saw the patient without a supervising physician. The office is billing all at the 85% as if the physician sees and provides the care to all of the patients, while it is actually the NP at times without any supervision from the physician.

In looking at incident to billing, changes were made in 2016 to the Medicare physician payment rule in regards to "incident to" billing (Turner, 2016). One change clarified the rules related to auxiliary personnel in which physicians and certain other providers "may bill incident

to for services and supplies provided by auxiliary personnel under their supervision" (Turner, 2016, p. 63). The second provided a clarification "on what constitutes permissible supervision of "incident to" services, and which physician is permitted to bill "incident to" services (Turner, 2016, p. 63). It specifies that "only the physician (or other practitioner) who directly supervises the auxiliary personnel providing the service or supply can bill incident to for that service or supply" (Turner, 2016, p. 63).

Looking at the case study, the billing clerk in the office Sam worked at could not simply bill as they have always billed, especially in the case in which Sam questioned it and because the supervising physician was not there. As the changes to the Medicare physician payment rules state, the supervising physician in this case must be the one to bill incident to the service Sam provided. Thus, further fraud has occurred.

Criminal and Civil Penalties

The acts that have occurred would fall under the False Claims Act. False claims have occurred in upcoding when the upcoding, or billing at a higher reimbursement, occurs by a supervising physician in which the services were provided by someone not being properly supervised (CMS, 2016). In this case, Sam, the NP, was not being supervised that day by the physician, yet the billing was being coded at the 85% reimbursement. This correlates with the incident to billing as again, the physician who supervises the auxiliary personnel is the only one who can bill or authorize the billing of the service.

This claim would be brought against Sam's supervising physician. The penalties for such a violation include risking the loss of a medical license, and if criminal charges are brought against the person, their freedom could be lost (HHS, 2016). Furrow, Greaney, Johnson, Jost and Schwartz (2015) elaborated on false claims act, stating they can be a felony and "punishable by

up to five years imprisonment and a fine of up to $25,000, to knowingly and willfully make or cause to be made a false statement or representation of a material fact in a claim for a benefit or payment under a plan or program funded by the United States or a state health care program" (p. 631). This could also impact Sam as it is also a felony if one chooses to "conceal or to fail to disclose knowledge of the occurrence of an event... or to bill for a physician's service knowing that the individual that provided the service was not a physician" (Furrow et al., 2015, p. 631). Additionally, the billing clerk could be considered for a misdemeanor in this case as she coded the reimbursement without the supervision and authorization by the physician, which is punishable by a fine of up to $10000 and one year's imprisonment (Furrow et al., 2015).

Similarly, the Civil False Claims Act would have been violated. If the supervising physician knowingly presented a false or fraudulent claim, there is "a civil penalty of $5500-$11000 plus treble damages" (Furrow et al., 2015, p. 633). Sam also could be subject to the penalty if he chooses to ignore the information he has about the reimbursement that has been occurring.

Civilly, the administrative false claims civil money penalty (CMP) could also apply in this case. The civil penalties with this are "up to $10000 per item or service, plus assessments equaling three the amount claimed" (Furrow et al., 2015, p. 639). This is applicable when a "person "knows or should know," that the claim is false or that the service was "not provided as claimed" (Furrow et al., 2015, p. 639). The physician and again, possibly Sam depending on his actions could be subject to this penalty.

If anyone in this case is convicted, there is also a mandatory exclusion that goes into effect in which those convicted cannot participate in Medicare, Medicaid, or a state health care program for at least five years (Furrow et al., 2015). Exclusion may also occur in some cases.

Sam's Options

Sam has several options in this case study:

1. Do nothing at all
2. Demand that the billing clerk changes the reimbursement codes for that day/services
3. Discuss the concerns with his supervising physician when the physician returns
4. File a report/claim of fraudulent practice
5. Seek legal help to discuss his options as soon as possible

The option I would recommend to Sam is to seek legal help as soon as possible. Sam needs to protect himself in this case. Since he just became aware of the issue, he has options in which his lawyer can work to protect him if any charges are brought against the office and physician. Lawyers experienced in healthcare will be able to not only analyze Sam's issues, but also be able to provide him with an evaluation legally, and complete a risk analysis (HHS, 2016). Legal counsel can also help Sam map out what steps he needs to take immediately.

Internal Safeguards

According to the Office of Inspector General, it is important for the office to establish and follow and compliance program (HHS, 2016). This will help physicians and other providers in the office avoid any fraudulent activities and ensure accurate and true claims. Components that should be included are to conduct internal monitoring and auditing, implementing compliance and standard practices, designating an individual to be a compliance officer or contact, carry out training and education for all staff, ensure lines of communication are open among all staff, publicize well-written and established guidelines, and enforce any necessary disciplinary actions if standards and guidelines are not met (HHS, 2016).

References

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