

Defining the Relationship Between Providers and Medical Billing Companies

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The entire medical community is under high scrutiny when it comes to coding and billing. All too often medical providers are subject to coding audits or civil enforcement actions regarding coding and billing, or even criminal actions for improper coding and billing. With such scrutiny, Medicare has a swift repayment requirement. If a person has received an overpayment from Medicare, the person is required to report and return the overpayment within 60 days. Overpayments include funds received by a provider as a result of a claim the provider submitted with the incorrect CPT code or insufficient documentation. 77 Fed. Reg. 9179-02, 9181 (Feb. 16, 2012).

When these situations (*i.e.* reporting overpayments or responding to audits, investigative demands, or recoupment actions) arise, the provider's medical billing company is often squarely in the middle of the process because medical billing companies actually perform coding and billing—highly regulated and scrutinized tasks. In the face of an audit or repayment claim, a provider will be required to (1) review the coding and billing records, (2) examine the documentation supporting the coding and billing, (3) research the relevant guidance regarding how to properly code the claims at issue, and (4) work with the enforcement agency or auditor to remedy the problem. This can be a large burden on both the provider and the billing company.

Since providers rely, in part, on billing companies to properly bill and code claims, providers must make sure that their contracts with billing companies clearly delineate the responsibilities of the billing company. We recommend that such contracts contain the following clauses:

- a provision indemnifying the provider from liability for the billing company's negligence, billing errors, or like conduct;
- a provision outlining the billing company's obligations to cooperate and provide access to documents and records in the event of an audit, repayment, or recoupment-type situation;
- a provision for sharing costs in the event of an audit, repayment, or recoupment-type situation; and
- a provision stating that providers are reliant on the billing company's expertise in knowing how to properly bill and code for their services.

Please note that these are just general recommendations. We recommend tailoring the agreement to the specific relationship and circumstances at hand.

Also, to heed off these problems in the first place, we recommend that providers remain abreast of recent developments and guidance on coding and billing. Providers can do this by reviewing coverage determinations, Centers for Medicare & Medicaid Services (CMS) guidance documents and manuals, and code definitions for the codes at issue in

the practice. We are always available to address questions or concerns regarding coding and billing.

In conclusion, providers and billing companies alike are facing increased scrutiny in coding and billing. If a provider or billing company is faced with an audit, recoupment action, investigative demand, or repayment, it must be prepared to adequately address the situation. Addressing respective responsibilities between the provider and the billing company up front can help to avoid crushing expenses or even a dispute. Please feel free to contact us with any questions or advice on accomplishing same.