

MEDICAID COMPLIANCE NEWS

Some Providers Turn to ‘Creative Billing’ as Medicaid Payments Drop

Some Medicaid billing errors are just that — inadvertent mistakes — while others are easy to identify as fraud. Still others involve gray areas in the law which may or may not cross the line from inadvertent error to fraud. “Creative billing,” as one nurse in Wisconsin recently called it, is one type of error that may cross that line, possibly leading to charges under the federal and state false claims acts.

According to Resolve Healthcare Billing Advocacy, LLC, 90% of medical bills contain errors. Many times, these are clerical mistakes. Transposing two numbers in a billing code could lead to a charge that is thousands of dollars more than it should be. These inadvertent errors, along with clear shams such as submitting claims for neonatal services for a 19-year-old, are easy to spot and resolve.

Creative billing is not so easy to identify as fraud. One example is charging one fee for making a surgical incision and a separate fee for closing the same surgical incision, plus charging for routine items such as hospital gowns and surgical gloves, which should not be billed separately. Another form of creative billing consists of using codes that maximize payment but do not accurately reflect the services rendered.

Some companies even advertise helping hospitals and physicians with their costs by using creative billing schemes.

According to Judy Waltz, an attorney at the San Francisco law office of Foley & Lardner LLP, “the False Claims Act’s standard of ‘reckless disregard’ is so broad that sometimes inadvertent errors can get caught in the fraud net.” For example, providers in California may mistakenly bill the state for services that are covered under Medicaid but not under Medicare, she tells *MCN*. Medi-Cal covers a broader range of practitioners than does Medicare, Waltz explains.

If a provider does not have “a full knowledge of the differing requirements” or a system that reviews and either denies or allows such claims, this could be viewed as a false claim, she says. The system also should adequately represent who performed the service.

Creative billing schemes are becoming more common. Low Medicaid provider payments encourage creative billing to compensate for inadequacies in the fee schedule, says Barry Johnson, M.D., president of HealthCare Insight. But this is not a new phenomenon. There is a lot of

evidence that the levels at which fees are set affect doctors’ responses to patients, and that a reduction in the fee rate will result in creative billing or an increase in activity to make up for a loss of income.

Case in point: In July, a Wisconsin nurse was charged by the state with felony fraud for allegedly billing Medicaid for approximately \$70,000 in false claims. According to the criminal complaint, Sarah Becker used the name and information of a six-year-old patient to submit 600 “exaggerated” bills over a 17-month period in 2007 and 2008.

When confronted by the patient’s mother, Becker allegedly said she had made a mistake and billed for the wrong patient, according to the *Sheboygan Press*. Becker is a certified independent nurse and regularly treated the child (who has mitochondrial disease and other conditions) for two years, the newspaper reports. The child’s mother and another nurse began reviewing all of Becker’s billings for the child and discovered more discrepancies, such as billings submitted while the child was in the hospital or in daycare, or for weekends even though the parents were never away, the *Press* says. At that point, they turned the information about Becker over to state officials.

Becker eventually admitted to the Wisconsin Department of Justice that she billed more hours than she actually worked. But according to the complaint, Becker said she did this to make up for services she provided to other patients, but couldn’t bill without exceeding Medicaid’s 12-hour daily limit of services. She referred to this as “creative billing.”

The complaint states that Becker claimed she provided notes supporting the bills for all the days she actually worked. She admitted, however, that any bills without notes would be false. If convicted, Becker faces up to three years in prison.

One attorney, who asked not to be identified because the case is ongoing, tells *MCN* that the creative billing in this instance is “clearly fraud.” While Becker may not have been billing more hours than she worked, “she was billing one patient for services that were not rendered to that patient,” he says. This is “fraud against the beneficiary,” the attorney adds.

Attorneys representing Becker did not respond to a request for comments on the charges filed against her and her statement to state officials regarding creative billing.

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