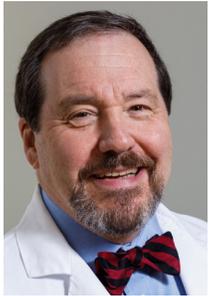


ALERT

Yale Medicine's Billing Compliance Newsletter

A Message From Joshua A. Copel, MD



Dear Colleagues,

The American Medical Association (AMA) and Centers for Medicare & Medicaid Services (CMS) are working together to produce more clinician-friendly outpatient evaluation and management (E&M) documentation rules to reduce complexity when selecting the level of E&M code to bill. The new documentation and billing rules for outpatient E&M codes, while not yet finalized, will be effective on January 1, 2021. The proposed rules affect only CPT codes 99202 – 99215.

As of 1/1/21, the proposal would remove the history and exam components of an E&M in the selection of the code to bill. The total time the practitioner devotes solely to the patient visit can be used to determine the E&M level, or the documentation relating to the medical decision-making for the encounter can determine the level to bill. The medical decision-making criteria will be similar to what we use now, and is largely based on the current Table of Risk.

While the new rules for office and outpatient hospital codes are slated to bring documentation relief to practitioners, it is important to bear in mind that the documentation rules will remain unchanged for all other E&M codes and locations such as inpatient, emergency room, consultations, and observation.

We welcome your feedback regarding the new rules. Please reach out to me or Judy Harris if you have suggestions on how best to implement the new rule.

Joshua A. Copel, MD
Assistant Dean for Clinical Affairs
Medical Director Billing Compliance
Yale Medicine

Providing Services for Your Mother? Don't Bill Medicare

If you are a physician treating a relative's lingering cold—or any other ailment—you might not be able to bill for it. Medicare does not pay for services that are provided by an immediate relative of the patient or another member of the patient's household.

This exclusion applies to items and services rendered by a physician who is related to the patient, even if an unrelated individual, partnership, or professional corporation submits the bill or claim. However, if one partner provides a service for a relative of another partner in the same practice, the first partner may legally bill and receive Medicare payment.

Who is an immediate relative, according to Medicare?

- Husband and/or wife
- Natural or adoptive parent, child, and sibling
- Stepparent, stepchild, stepbrother, and step-sister

- Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law
- Grandparent and grandchild
- Spouse of grandparent and grandchild
- Members of the patient's household

A member of a household means anyone who shares a common abode as part of a single-family unit, including individuals related by blood, marriage, or adoption, as well as domestic employees, and others who live together as part of a single-family unit. Roomers and boarders are not included.

The following patients are not immediate relatives and CAN be billed to Medicare: the husband or wife of any siblings the physician's spouse has (some people assume these are bona fide in-laws, but they're not), and the stepparents of the physician's spouse. It's important to remember that direct step- and in-law relationships—relatives that cannot be billed—continue to exist even after divorce or death of one of the parties.

Helpful HIPAA Hints

Everyone is responsible for HIPAA compliance and helping to prevent HIPAA violations. The tips that follow can help you avoid a HIPAA violation.

Appropriate Epic Access

- Epic access is granted based on your job role and is to be used only for work-related purposes.
- You can access your own Epic record but cannot change anything or add anything to it.
- Never share your passwords and be certain to tap out if you tapped in.
- Stay in your lane – don't go where you don't belong once in the Epic record.
- Always search using an MRN or two identifiers – NEVER hunt and peck through the EMR.
- Upon written request, MDs, DOs, APRNs and PAs licensed in the State of Connecticut may access an individual's Epic record to provide treatment advice to an individual who they are not otherwise treating ("informal consult"). The written authorization should be stored in the media tab in Epic.

Verifying Who You're Speaking To

- Always verify the caller by asking them to verify two pieces of information in the registration screens. Do not read the information to the caller and ask them to confirm.
- If the caller cannot verify adequately, state that you will call them back, then call the number in registration for the patient.
- The Spokesperson Form should be used to document patient permission to speak with another individual about their care on an ongoing basis when the patient may not be available to agree or object.
- Never hand PHI to a patient or band them without asking the patient for their name and DOB a second or even a third time.

HIPAA-Compliant Texting and Email

- Texting between providers should only be done using the Mobile Heartbeat app on secured devices.
- Texting with patients requires that we inform the patient there is a risk in transmission and ask if they accept the risks.
- Emailing with patients does not require encryption as long as we inform them of the risk

in transmission and ask if they accept it.

- Email between yale.edu and ynhh.org email platforms is secure – no encryption is required.
- Email containing PHI going outside the covered entity (and not to a patient that has accepted the risk in transmission) requires encryption.
- Encrypt an email by typing [encrypt] as the first word on the subject line.

Please contact hipaa@yale.edu or (203) 432-5919 if you have any questions or concerns.

In the News

New London Psychiatrist and Mental Health Clinic Pay over \$3.3 million to Settle False Claims Act Allegations

Dr. Bassam Awwa and his medical practice, Connecticut Behavioral Health Associates, P.C. (CBHA), entered into a civil settlement agreement with the federal and state governments in which they will pay \$3,382,004 to resolve allegations that they violated the federal and state False Claims Acts.

CBHA provides behavioral health and addiction medicine services to Medicare and Medicaid beneficiaries. There were three allegations against CBHA.

First, CBHA regularly conducted urine drug screening tests on urine samples collected from patients treated at the practice. Although the test screens a patient's urine for multiple classes of drugs, Medicare considers it a single test that should be billed only once per patient encounter. The government alleged that CBHA submitted claims to Medicare for multiple units of urine drug screening tests, when they knew or should have known that only one unit of service could be billed per patient encounter.

Second, CBHA submitted claims to Medicare for alcohol tests conducted on patient urine samples that they knew or should have known were a component of the urine drug screening test for which the practice was already being paid by Medicare.

Finally, the government claimed CBHA defrauded the Connecticut Medicaid program by submitting claims for definitive urine drug tests (also known as "quantitative" or "confirmation" tests) that were not actually performed, and by improperly submitting claims to Medicaid for specimen validity testing of urine samples.

As part of the \$3,382,004 settlement, Dr. Awwa and CBHA entered into a three-year

billing Integrity Agreement with the U.S. Department of Health and Human Services that is designed to ensure future compliance with the requirements of federal health care programs.

APRN Who Received Kickbacks from Insys Therapeutics for Prescribing Fentanyl Spray is Sentenced

Heather Alfonso was sentenced in New Haven court to three years of probation for engaging in a kickback scheme related to fentanyl spray prescriptions. Alfonso pleaded guilty to one count of receiving kickbacks in relation to a federal health care program.

Alfonso was formerly employed as an Advanced Practice Registered Nurse (APRN) at Comprehensive Pain and Headache Treatment Center (CPHTC) located in Derby. As part of her practice, Alfonso prescribed various controlled substances, including Subsys, a fentanyl-based sublingual spray that was approved by the Food and Drug Administration solely for the management of breakthrough pain in cancer patients. Subsys was manufactured and sold by Insys Therapeutics.

A review of Medicare Part D prescription drug events for prescribers of Subsys showed that Alfonso was responsible for approximately \$2.5 million in claims and was the highest prescriber of the drug in Connecticut. Interviews with several of Alfonso's patients, who were Medicare Part D beneficiaries and were prescribed Subsys, revealed that most of them did not have cancer, but had taken the drug to treat their chronic pain. Medicare and most private insurers did not pay for Subsys unless the patient had an active cancer diagnosis and the drug was needed to manage the patient's cancer pain.

An investigation revealed that Insys Therapeutics representatives were inducing medical practitioners around the country to prescribe Subsys over other similar medications by paying the medical practitioners to participate in hundreds of sham "Speaker Programs." The Speaker Programs, which were typically held at high-end restaurants, were ostensibly designed to gather licensed health care professionals who had the capacity to prescribe Subsys and educate them about the drug. In truth, the events were usually just a gathering of friends and co-workers, most of whom did not have the ability to prescribe Subsys, and no educational component took place. "Speakers" were paid a fee that ranged from \$1,000 to several thousand dollars for attending these dinners.

Between approximately January 2013 and March 2015, Insys Therapeutics paid Alfonso approximately \$83,000 to act as a "speaker"

for more than 70 dinner programs. In many instances, the dinner programs were only attended by Alfonso and an Insys Therapeutics sales representative.

Alfonso's conduct resulted in a loss to Medicare of \$2,564,501.64 and she must pay full restitution, jointly and severally with other defendants convicted in this scheme.

Insys Therapeutics agreed to pay a total of \$225 million to resolve criminal and civil investigations of the company. In addition, John N. Kapoor, the founder and former executive chairman of Insys Therapeutics, and four other former Insys executives were found guilty of a racketeering conspiracy.

Licensed Professional Counselor Pays \$39K to Settle False Claims Allegations

Channa Sontag and her business, Children's Behavioral Therapy LLC in Waterbury, entered into a civil settlement agreement with the federal and state governments and will pay more than \$39,000 to resolve allegations that they violated the federal and state False Claims Acts. Court documents alleged that, on numerous occasions, Sontag billed Medicaid for 60 minutes of one-on-one individual psychotherapy services when, in fact, the individual psychotherapy services were less than 60 minutes.

To resolve the allegations under the federal and state False Claims Acts, Sontag and Children's Behavioral Therapy LLC will pay \$39,471.22 in order to reimburse the Medicaid program for conduct occurring from November 3, 2014 to March 15, 2017. Sontag was also suspended from participating in the Connecticut Medicaid Program for a five-year period.

This case stems from a larger investigation into fraudulent activity in the area of behavioral health services, which has been jointly conducted by the Office of the Inspector General of the U.S. Department of Health and Human Services, the Medicaid Fraud Control Unit of the Chief State's Attorney's Office and the Connecticut Office of the Attorney General, with support from the Connecticut Department of Social Services.

ALERT

Teaching Physician Compliance

Compliance Programs—Preventive Medicine for Healthcare Practitioners

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1-877-360-YALE (9253) hotline

If you have concerns about medical billing compliance that you are unable to report to your supervisor or to the Compliance Officer, please call the hotline number above.

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