Reimbursement Compliance Issues
Getting it Right

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Financial Disclosure

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Course Objective

• Series of case studies detailing compliance issues
• Identify possible reimbursement issues under scrutiny
• Discuss the legal approach to cope with these compliance issues
• Develop a corrective action plan

Compliance Report

In anticipation of developing a compliance program, ABC Eyecare requested a compliance review to assess its current level of compliance with rules and regulations associated with billing practices and operational issues. This review was conducted by a billing consultant and a health care attorney. The findings reveal a series of issues to address.

1. Comanagement
2. Documentation and coding for ophthalmic drugs
3. RAC review of blepharoplasty cases
4. Financial relationship with other subspecialist
5. Responding to an overpayment letter

Issue 1: Comanagement

• Medicare charts for surgical services comanaged with local optometrists revealed:
  ▪ No signed comanagement form supporting patient choice
  ▪ No transfer letter from MD to ODs
  ▪ One OD is not enrolled in Medicare - paid for comanagement by MD
  ▪ Surgery comanaged in approximately 80% of cases reviewed
  ▪ All premium service fees (noncovered tests, IOLs, femto laser) shared with comanaging ODs at 20% of MD charge
  ▪ MD payment to ODs for all noncovered comanagement services

What did I do wrong?

What do I do now?
**Comanagement Issues – Documentation and Billing**

- Medicare charts for surgical services comanaged with local optometrists revealed:
  - No signed comanagement form supporting patient choice
  - No transfer letter from MD to ODs
  - One OD is not enrolled in Medicare - paid for comanagement by MD

**Postoperative Care Request Form**

- Patient’s choice to comanage
- Rationale *(if required by MAC)*
- Clinically appropriate
- Competency
- Provision for complications
- Explanation of financial impact
- Signature

**Comanagement – CMS Instructions**

- Requires transfer letter
- Written documentation
- Proper use of modifiers (54, 55)
- Segregation of postop care based on responsible parties
  - Receiving doctor must see the patient
  - When no agreement exists, use E/M codes
  - Group members are ineligible

Source: MCPM Chapter 12, §40.2.A.3

**Correspondence**

**Key Points in transfer letter**

- Patient name
- Operated eye
- Nature of the operation
- Date of surgery
- Clinical findings
- Discharge instructions
- Transfer date

**Comanagement Issues – Reimbursement / Legal**

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**Is 80% Comanagement a Problem?**

- ASCRS/AAO Comanagement Guidance cautions that:
  - Comanagement should not be “routine”
  - Documented Patient Choice
    - What if 80% of patients affirmatively choose to be comanaged?
    - Is that routine comanagement?
May the Practice Pay the Optometrist for Comanagement Services?
- For non-covered tests?
- For non-covered portion of IOL?
- For femtosecond laser services?
- 20% of charge to the patient?

What Are the Critical Elements of Payment?
- Documentation of patient choice
- Documentation of patient knowledge of how much is paid to whom and for what
- Payment must reflect the fair market value of the services provided, and that are not otherwise paid for as part of the payment for covered services.

Issue 2: Documentation and Coding for Ophthalmic Drugs
- Chart review revealed:
  - Incomplete documentation of procedures related to injected drugs
  - Inability to reconcile drug log to payments received for drugs
  - Drug units billed do not match HCPCS code descriptor
  - Vials of Lucentis purchased reflect less than 1/2 number of Lucentis administrations performed and billed

What did I do wrong?
What do I do now?

Documentation and Coding for Ophthalmic Drugs

Procedure Note
- Preop and postop diagnoses
- Indications for surgery
- Description of surgery including location of injection
- Drug, dose, lot #, expiration date
- Discharge instructions

Create Inventory Tracking System
- Serial number each vial
- Create labels
  - Manufacturer’s invoice
  - Patient chart
  - Injection log book
  - Superbill and practice management system
Documentation and Coding for Ophthalmic Drugs

• Vials of Lucentis purchased reflect less than 1/2 number of Lucentis administrations performed and billed.

Potential Problems
1. Billing for Lucentis not administered
2. Billing for Lucentis when Avastin was administered
3. Billing for multi-dosed Lucentis

Issue 3: RAC review of Blepharoplasty

• Practice shared 10 blepharoplasty cases:
  ▫ No pre-op photos for two cases
  ▫ No lifestyle complaints noted in any patient record regarding eyelids
  ▫ Visual field studies did not meet LCD requirements in four cases

What did I do wrong?

What do I do now?

RAC Issue

Name Professional Services Review of Blepharoplasty - Eyelid Lifts
Number B008142013
Description Blepharoplasty is the plastic repair of the eyelid, and usually refers to an operation in which redundant skin, muscle, and/or fat are excised. Functional blepharoplasty usually involves the excision of skin and orbicularis muscle. This procedure is usually done to correct a deficit in the upper or peripheral field of vision or as noted on forward gaze by skin resting on the upper eyelashes. When blepharoplasty repair is done for cosmetic purposes it does not meet the criteria of the functional visual impairment parameters and is considered not reasonable and medical necessary and therefore will deny.
Claim Type Professional Services
Issue Type Complex Overpayment / Underpayment Overpayment
Dates of Service 6/1/2010 - Open

Source: http://racb.cgi.com/Issues.aspx

RAC review of Blepharoplasty

Appeal or Refund

• Is there a basis to appeal for:
  1. Lack of photos
  2. Visual fields inconsistent with LCD
  3. Lack of patient complaints

Blepharoplasty LCD - Excerpts

A. Documentation in the medical records must include patient complaints and findings secondary to eyelid or brow malposition such as:
  1. Interference with vision or visual field, related to activities such as, difficulty reading due to upper eyelid drooping, looking through the eyelashes, seeing the upper eyelid skin, or brow fatigue.
B. Photographs and medical record documentation must demonstrate at least one of the following:
  1. For Blepharoptosis Repair - photographs of both eyelids in the frontal, straight-ahead position and/or down-gaze should be taken as appropriate.
C. Visual fields
  1. The indication for surgery is supported if a difference of 12° or more or 30% superior visual field difference is demonstrated between visual field testing before and after manual elevation of the eyelids.
**Issue 4: Financial relationship with other subspecialist**

- **Proposals**
  1. Written lease providing for space and equipment ½ day per week; lease amount set at 50% of revenue generated
  2. Independent contractor with compensation set at $200 per hour on an as needed basis; $200 per hour is generally agreed to be fair market value for specialist’s services
  3. Part-time employment agreement with compensation set at 30% of revenue generated

**What Advice Should the Attorney Give?**

**Issue 5: Overpayment Letter**

- Practice presents consultant and attorney with letter from Medicare demanding repayment of $100,000. Overpayment based on review of employed physician whose practice was purchased this year. Overpayment relates to period prior to acquisition.

**What did I do wrong?**

**What do I do now?**

**How could you avoid or mitigate this problem?**

1. Acquire assets of the practice, not the practice itself.
2. Do not acquire the physician’s provider number.
3. Perform billing and coding due diligence prior to acquisition.
4. Include an Indemnification provision in the Purchase Agreement.
5. Maintain an escrow account with funds from the purchase to cover future liabilities.
6. Hold physician accountable in the employment agreement for any overpayment and recoupment related to pre-acquisition conduct.

**Conclusion**

- Take compliance activities seriously
- Remember that rules and regulations are not static
- Stay informed
- Develop a formal compliance program
Thank you

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