Guarding Against Medicare Fraud

by Roberta L. Buell, M.B.A.

Q: What is Medicare fraud?

A: Medicare defines fraud as the intentional deception or misrepresentation by an individual that could result in some unauthorized benefit, such as reimbursement under the Medicare program.

Q: What are some examples of Medicare fraud?

A: If you are participating in any of the following actions, you may need an attorney and a plan of corrective action.

- Billing for services that were never provided, including "no shows"
- Misrepresenting a diagnosis to gain coverage, such as using an on-label diagnosis for an off-label and uncovered use
- Altering claim forms to get a higher payment
- Deliberately applying for duplicate payment to Medicare and another payer
- Soliciting, offering, or receiving a kickback, bribe, or rebate that results in utilization of services
- Unbundling—billing for service components rather than for a comprehensive code
- Billing for a non-covered service as a covered service, for example, billing for self-administered drugs as if they were provided in your cancer center
- Using the provider number of another physician
- Up coding
- Routine waiver of co-payment and deductibles regardless of need.

Q: What is abuse under Medicare?

A: Abuse involves medical, fiscal, and business practices. If a service is not consistent with common business or standards of care in oncology, then you can be accused of abuse. Abuse does *not* have to be intentional.

Q: How do I know whether abuse has occurred?

A: Questions to ask include: 1) Is the service/supply medically necessary and appropriate? 2) Has a fair price been charged for the service or supply? and 3) Is a patient denied service because he or she refused to pay a deposit prior to initiation of service?

Q: What areas are most risky for cancer clinics?

A: Although each cancer clinic must assess its own situation, here are three risky areas:

- *Billing the highest level laboratory panel for the vast majority of patients.* Although this practice is most often unintentional, if physicians order higher-level laboratory panels for a majority of their patients, they must be sure they can justify the medical necessity of doing so.
- *Billing for "take home" injectable drugs.* Many clinics and practices believe that this practice is acceptable because Medicare covers injectable drugs. However, when the bill reflects that the place of service is the hospital or physician office, billing for injectable drugs is fraudulent. The only "take home" cancer drugs that can be billed to Medicare are statutory exceptions, such as oral cancer medications covered under the Cancer Coverage Improvement Act of 1994 and oral anti-emetics.
- *Billing for "free" drugs.* All oncology clinics and practices have to make sure that they do not intentionally or accidentally bill for drugs that were not purchased.

Q: How can oncology clinics and practices help ensure they do not bill for drugs not purchased?

A: Make sure that samples are labeled and that labels stay intact. Segregate your sample inventory from other drugs in a way that ensures that these drugs are not accidentally charged to Medicare and other payers.

Next, account for "replacement" drugs. Some pharmaceutical companies have replacement programs for drugs that are denied by Medicare in cases where the patient cannot be held liable. If this drug is used for another patient, ensure that you tracked the drug in your inventory or billing system.

Finally, do not bill free drugs. Although discounting programs might allow for a free vial of drug (for example, you buy five vials and get one free), do *not* bill the free one to Medicare.

Q: How can we guard against billing fraud or abuse?

A: First, ensure that everyone feels fully responsible for the codes you use. If you use a billing service, you are responsible. If you are a hospital clinic, do not leave it up to Patient Accounting—you know more about the drugs and other codes you use.

Second, have a checking mechanism for coding and billing to Medicare. Whether or not you have a formal compliance plan, make sure you have a quality control process for your coding and what is ultimately transmitted to Medicare.

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