



Editorial

Billing and up coding: What's a doctor-patient to do?

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Case scenario

Doctor “Try Harder” (“Dr. TH”) is an experienced dermatologist who has familiarized herself with the requirements for proper Current Procedural Terminology (CPT) coding of office visits and procedures. When she retired, Dr. TH became a patient of a large multispecialty health care group to manage her moderate hypertension and hypercholesterolemia, which requires her to visit her internist two times per year. Additionally, she developed numerous actinic keratoses and non-melanoma skin cancers (NMSCs) that required dermatologic care. Although she was fond of both her physicians at the group, Dr. TH became uncomfortable with the billing and coding associated with those visits when she saw her office statements. Almost all visits were coded as “99214” by both of her doctors despite the fact that visits lasted only 10 minutes. The internist visit consisted of a nurse checking Dr. TH's blood pressure and the doctor reviewing her latest cholesterol studies before palpating for pulses and auscultation of her lungs and heart. She had no issues with her medications. Her dermatologist only checked her sun-exposed skin of the face and arms. Little, if any, medical decision-making of consequence seemed to be required of both doctors.

Since the practice manager of this multispecialty health care group formerly worked for Dr. TH, she asked her about the office coding. The manager responded that virtually all patients in this practice were billed the “99214” code for follow-up visits. Dr. TH then asked about the lengths of visits and the extent of examinations, and learned that both complicated and simple visits were coded the same way. Dr. TH was concerned that this practice was acting in an unethical manner by upcoding.

At this point Dr. TH should:

- Leave this practice and find another group that codes appropriately.
- Meet with the doctors to discuss her concerns about suspected upcoding.
- Report the practice to the Ethics Committee of the doctors' hospital or State Medical Society.
- Ask trusted colleagues and/or friends how they might react to this situation.

- Report the practice to the State Attorney General or to a Medicare Compliance office.

Discussion

Professionalism in the field of medicine has dictated that physicians operate under a unique code of ethics, which is different from most businesses due to the primary duty to be dedicated to the welfare of patients and our professional imperative for self-regulation of our peers. These principles can appear to be at odds with the modern-day practice of medicine where monetary business concerns are inextricably linked to the ability to interact with and subsequently treat patients. The American Academy of Dermatology is explicit in its Professional and Ethical Standards for Dermatologists, and states that we “should not engage in fraudulent billing or coding” and that “[it] is unethical for dermatologists to submit billing codes that reflect higher levels of service or complexity than those that were actually required” (American Academy of Dermatology, 2016). It is important to note that fraudulent billing is illegal as well as unethical.

This case highlights a contemporaneous issue facing the medical profession: in an era of declining reimbursements, rising overheads, and increased scrutiny (and rejection) of charges by third-party payers, physicians are in a constant battle with insurers about accurate payment for the services rendered (Kesselheim and Brennan, 2005). To the outside observer, the distinction between fraudulent coding and unintentional upcoding may not always be clear (Wynia et al., 2000). Some may believe this is a harmless act since there is no detrimental outcome for the patient. However, overbilling from any scenario, whether intentional or not, has a damaging impact on the health care system as a whole and is not a victimless event. There are a finite number of resources available, and overutilization or overcharging ultimately shortchanges monies needed for other areas and infringes on the core tenet of justice in medical ethics. It is conceivable that the patient could have been on a high-deductible plan where the upcoding impacted the patient's financial well-being. Furthermore, if this patient's experience is indicative of a larger pervasive and systematic problem in medical practices, other patients are certainly suffering direct financial harm as well, in opposition of the principle of beneficence. No matter the reason, the practice of fraudulent coding is unethical, unjust, and maleficent.

The patient, if knowledgeable of such a violation, has an obligation to help stop unethical or fraudulent behavior. The challenge for

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patients in this scenario is expressing their concerns in a non-threatening manner to the physicians. Being found guilty of an upcoding fraud can, and should, lead to dire consequences for the physician (Hannigan, 2006). Even if the physician is not guilty and there is just a misunderstanding, the accusation can lead to considerable financial cost and emotional turmoil and as such, accusations of impropriety should not be taken lightly. In this case, the physician-patient confirmed with the practice manager that something was amiss before jumping to conclusions based on her own personal experience. Medicare auditors and other third-party payers routinely identify billing outliers and refer many such cases for further focused review. Audit investigations include on-site visits and interviews with patients. Errors in billing or coding may subsequently be subject to case-by-case refunds or even extrapolation of the error to the physician's patient population. Fraudulent activities have previously been targeted for criminal prosecution with risks for additional hefty fines and/or jail time.

Ideally, the burden of regulating ethical behavior of physicians should fall on the members of our medical profession and not on our patients. In our case, the roles of patient and physician are intertwined and complicate the ethical dilemma. Proper coding touches upon many of the principles that form the framework for medical ethics but beyond these issues, there is a more distinct principle of professional integrity and moral excellence. For physicians and non-physicians to trust their care to medical professionals, we must be certain of their integrity. As such, we must self-police and protect against activities that undermine the public's trust in physicians.

Analysis of case scenario

When reviewing our case, a balance must be struck between overreacting to suspected behavior and curtailing fraudulent behavior given the ramifications of reporting (Kantor and Rapini, 2016). However, since the upcoding by the physicians in our scenario was consistent and repetitious, this case brings to bear the uncomfortable possibility of addressing unethical or possibly fraudulent behavior among colleagues.

Option A, leaving the physicians' care, is not appropriate, as the coding issues are likely to continue whether or not Dr. TH remains their patient. Furthermore, Dr. TH would then have to build new relationships of ethical confidence with new caregivers.

Option B, discussing the issues with the physicians, is the most direct and personal approach and has the distinct benefit of allowing the physicians involved to explain their justifications for the coding directly to the concerned party. This approach may offer the best chance for Dr. TH not only to address her concerns about the coding practices, but also to find out whether the physicians in question are indeed resorting to fraud. However, Dr. TH would have no guarantee that her confrontation would end the suspected upcoding, and it could threaten the doctor-patient relationship for her.

Option C, speaking with the Ethics Committee of the hospital or State Medical Board, may offer the best balance between protecting

Dr. TH's anonymity in reporting potential fraud and ensuring that the appropriate organizations get involved. This option is also most likely to ensure compliance with coding norms without the fear of causing undue permanent consequences for the accused because local, regional, or national medical Ethics Committees have resources to investigate and help remediate improprieties before resorting to more serious outcomes. Historically, state medical boards investigate in a balanced way and are not unduly harsh on physicians.

Option D, asking trusted colleagues and/or friends how they might react to this scenario, is likely the best first step. It is always wise to seek counsel from your colleagues and friends so that you do not overreact and create a potentially very unpleasant outcome for the physicians in the multispecialty health care group. Although professionally, we have an obligation to police ourselves, caution and seeking additional counsel is advisable before acting. Nonetheless, fraudulent billing cannot be ethically ignored and must be investigated and resolved. Therefore, after seeking counsel, one must act further by either reporting this perceived fraudulent billing or trying to change the behavior of the practice through discussions with the physicians.

Option E, reporting the practice to the State Attorney General or to a Medicare Compliance office, is the final option that will ultimately resolve this issue. If the physicians of the practice refuse to explain and justify their billing practices in a satisfactory, ethical, and legally compliant manner, and if all other actions fail to change their behavior, reporting them to the appropriate authorities remains the only legal and ethical option available.

Conclusion

A decrease in reimbursements combined with the difficulties in dealing with third-party payers with respect to reduced, delayed, or even declined claims for services rendered has led to an adversarial sentiment between some physicians and insurance companies. Despite the difficulties and challenges in medical practices today, our contractual agreements with health insurance providers dictate clear expectations and guidelines that must be followed. We must act honestly and ethically with regard to the medical care of our patients. These ethical duties across the board far outweigh the quest for simple monetary gain.

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