How to get in trouble with Medicare

By
Dr. Ron Short, DC, MCS-P, CPC

Correction from Last Month

- You should watch for a code N620 on the remittance advisories.
- N620 reads: "This procedure code is not payable. It is for reporting/information purposes only" and replaces code N365.
- This code will indicate that the reporting code passed into the national database.
- If you report the G-codes with a $0.00 dollar amount you will receive a N620 code on the remittance advisory.
- If you report the G-codes with a $0.01 dollar amount you will receive both a N620 and a CO260 code on the remittance advisory.

Two Case Studies

- We are going to review two actual cases that I have been involved in.
- Dr A.
- Dr. B.

Dr. A.

- Dr. A. called me one Saturday and told me that he had received a call that the OIG would be in his office next Thursday and could I help him.
- I contacted an attorney and developed a protocol.
- We executed the protocol with the OIG and then I developed a compliance program for his office.
- A year later, the OIG contacted the doctor again to say that they were going to be in his office to collect records for 100 dates of service in CYs 2010 and 2011.
- Again, I contacted the attorney and developed a protocol.
- When I explained the protocol to the doctor, he was unsure and sought a second opinion.
- The following is taken from an OIG report dedicated to this case:
- Of the 100 sampled chiropractic services, 7 services were allowable in accordance with Medicare requirements. The remaining 93 services were not allowable: 70 were medically unnecessary, 11 were incorrectly coded, 9 were undocumented, and 3 were insufficiently documented. As a result, Dr. A. received $3,196 in unallowable Medicare payments.
- On the basis of our sample results, we estimated that at least $708,022 of the $879,658 paid to Dr. A. for chiropractic services, or approximately 80 percent of the total amount paid, was unallowable for Medicare reimbursement. These overpayments occurred because Dr. A. did not have adequate policies and procedures to ensure that chiropractic services billed to Medicare were medically necessary, correctly coded, and adequately documented.

Lessons from Dr. A.

- Document Medicare visits properly.
- When an expert tells you there is a problem, believe them.
- Don't believe anyone tells you there is not a problem.
- Anything involving the OIG takes a long time.
- Expect the OIG to extrapolate from the statistical sampling.

Dr. B.

- Dr. B called me one day to tell me that he just had an OIG Special Agent in his office hand delivering a written request for all records on 34 patients.
- He wanted to know if he had a problem and what to do about it.
- After talking to him further, I had him send me all correspondence from Medicare for the past two years.
- I reviewed that information and developed a timeline.
- My review found that the Medicare Administrative Contractor for his jurisdiction had contacted him about 18 months prior and told him what he was doing wrong and that he needed to take steps to correct it.
- He took no corrective action.
- A few months later, the Zone Program Integrity Contractor for his jurisdiction contacted him requesting records on some patients.
- The review took a few months.
- They sent him a letter telling him what he was doing wrong and that he needed to fix it.
- They also demanded that over $18,000 be paid back.
- Again, he took no corrective action.
- The next step was the appearance of the OIG Special Agent in his office.
- In addition to all of this, he had received a Comparative Billing Report.
- Armed with this information, I prepared a plan for him and found an attorney in his area that I felt would properly handle his case.
- After presenting this plan, he called ma a few days later to thank me and tell me that his local attorney would handle it.
- I have heard no more from or about him.

Lessons from Dr. B.

- When Medicare tells you to fix something, get the help that you need and fix it.
- Have treatment protocols that are compatible with Medicare regulations.
- If you hire an attorney, make sure that they have the training and experience to deal with Medicare regulatory situations.
- Pay attention!

OIG

- Strictly concerned with fraud and preventing it.
- They have their own inspectors and auditors.
- They can enter your office and inspect your files without a warrant.
- Can go back to the first day of your practice if they want to.
- Maintains the Excluded Individuals list
- Can levy Civil Money Penalties (CMP)
- Can refer cases to the Department of Justice (DOJ) for prosecution
- In 2008 they collected $17 for every $1 they spent on audits
- In 2010 they fined Phizer $2.3 Billion for advertising a drug for off-label usage.

What To Do When The OIG Knocks

- With the OIG reviewing chiropractors across the country the likelihood of you having an in-office audit has greatly increased.
- Having the OIG in your office is like inviting a bear to dinner, the chances are that you will be the main course.
- Knowing what not to do is as important as knowing what to do.
- If the OIG comes to your office, you are under suspicion of fraud.
- Your first impulse will be to try to explain.
- DON'T
- When you are informed that the OIG is coming to your office your first step should be to call someone who is trained and experienced.
- That person should refer you to an attorney.
- You should hire the attorney who will then hire the consultant.
- This places the consultant under attorney-client privilege.
- The consultant will then work with you to determine who is best equipped to locate files and associated information.
- You should then call all patients scheduled for that day and reschedule them.
- You will close the office for the time of the audit and have only the consultant the designated person present.
- The OIG will often got to the homes of staff members to interview them.
- You CANNOT tell your staff that they cannot talk to the OIG representatives.
- You can, however, tell them that they have the right to refuse to talk to them, to designate the time and place to talk to them and to have a lawyer present.
- You can also offer to supply the lawyer.
- By insulating yourself and your staff from direct, uncontrolled exposure to the OIG auditors you will decrease the chances of an escalation in the scope of the audit.

- By following these procedures you will have time and expert advice to answer questions properly with well thought out answers.

Zone Program Integrity Contractors

- The ZPIC (Zone Program Integrity Contractor) BI (Benefit Integrity) unit is responsible for preventing, detecting, and deterring Medicare fraud.
- The ZPIC BI units are required to use a variety of techniques, both proactive and reactive, to address any potentially fraudulent billing practices.
- The ZPIC investigates fraud leads and builds fraud cases
- They work with Medicare Administrative Contractors and Law Enforcement.
- If you receive a records request from a ZPIC there has been an allegation of fraud.

OIG Procedural Flaws

- Small sample size.
- For Dr. A, they sampled 100 patient records to represent a total of over 23,000 patient visits over 2 years.
- Even though this procedure has been upheld by the Departmental Appeals Board and Federal court, it still represents only about 4 tenths of 1 percent of the total patient visits affected.
- Reviewing only random visits out of a treatment plan presents an incomplete picture of the effectiveness of an episode of care.
- To get a complete picture of the episode of care, you need the documentation from the assessment visits before and after the date in question as well as all of the treatment visits in between.

Preventive Actions

- The old saying a ounce of prevention is worth a pound of cure was never more true than when dealing with Medicare.
- Educating yourself on the Medicare regulations and procedures can take both time and money, but recovering from Medicare and OIG audits can take years and cost tens of thousands of dollars, or more.
- The most effective preventive actions to take are:
- Document all Medicare visits in accordance with the requirements in the Medicare regulations.
- Document proof of medical necessity.
- Bill all Medicare visits in accordance with Medicare regulations,
- Have treatment protocols that are consistent with Medicare regulations.
- Have an Office Compliance Program installed and operating in your office.

Medicare Documentation

- Medicare has specific requirements for documentation of initial visits and subsequent (daily) visits.

- Utilize a system that will capture those required data elements in a format that reviewers will understand.
- The system should also capture the information necessary to prove medical necessity for care to Medicare.

Medicare Billing

- Bill the services that you are required to bill to Medicare.
- Use the correct Medicare modifiers at the correct time.
- Complete the CMS 1500 claim form according to Medicare regulations.
- Do not bill Medicare for maintenance care.

Treatment Protocols

- Use treatment protocols that are consistent with Medicare regulations.
- Develop treatment plans with specific goals.
- Prove the medical necessity.
- When the patient reaches Maximum Medical Improvement, move the to maintenance care.

Office Compliance Program

- Have someone that is trained and certified develop an Office Compliance Program for your office.
- Once it is in place, implement the policies and procedures and keep it up to date.

Summary

- Medicare is now actively seeking those doctors that are not complying with the laws, rules and regulations of Medicare.
- It is much cheaper and easier on you to take the actions necessary to become compliant before the OIG comes knocking on your door.