

Case Closed

A risk management publication for PICA policyholders.

In this case

the podiatric physician underwent a civil investigation by the U.S. Department of Justice for allegations of improper billing.

CIVIL INVESTIGATIVE DEMAND

The insured podiatric physician received a Civil Investigative Demand (CID) from the U.S. Department of Justice in the course of a False Claims Act (FCA) investigation to determine whether the insured violated the FCA by up-coding services billed for the treatment of patients with Morton's neuroma.

The CID required the insured to provide certain documents on or before 30 days after the service of the CID. The insured was commanded to produce the following categories of documents in his possession, custody and control during the past six years, beginning January 1, 2010:

- All contracts or written agreements
- All instructions, billing information sheets, or billing templates provided to the insured that include Morton's neuroma or CPT codes 64455, 64632 or 64640.
- Any communication that discussed Morton's neuroma or CPT codes 64455, 64632 or 64640.

ALLEGATIONS

After its review of the records provided by the insured, the federal government alleged that the insured:

- Incorrectly billed CPT code 64640 when CPT codes 64455 or 64632 were the appropriate codes to bill for the treatment of Morton's neuroma.

- Inappropriately used modifier 59, which is applicable when a procedure or service is distinct or independent from other non-E/M services performed on the same day, such as when multiple injections are made to different sites.

DEFENDING THE CLAIM

The insured immediately called PICA to report the CID and an Administrative Defense Coverage (ADC) claim was opened.

PICA retained legal counsel to defend the insured. As part of the defense, coding experts were retained to perform an analysis of medical and billing records of patients the insured treated for Morton's neuroma. The analysis revealed the insured may have incorrectly used CPT code 64640 (destruction of other peripheral nerve or branch by neurolytic agent) when CPT code 64632 (destruction of plantar common digital nerve by neurolytic injection) or CPT code 64455 (injection, anesthetic agent, plantar common digital nerves) should have been used.

In each case, the insured's clinical findings indicated metatarsal interspace neuromas, confirmed by ultrasound. The insured's documentation stated he was injecting into the interspaces, traditionally regarded as the location of the plantar common digital nerve. The peripheral nerves that might qualify for CPT code 64640 are often viewed as being proximal to this area.

Using two nationally recognized podiatric coding experts, defense counsel was able to argue effectively that there is an anatomical ambiguity as to where the plantar common digital nerves transition to the peripheral nerves. Depending on the exact location or angle of the needle, a podiatric physician could arguably be injecting either one nerve or the other.

Also, prior to 2009, most podiatrists used CPT code 64640 for the destruction of Morton's neuromas by alcohol injection or 64450 for injection of steroidal agents to the neuroma. Changes were made to the CPT Manual in late 2009 regarding injections of neuromas, but the insured did not become aware of the changes until 2011. Once aware of the changes, the insured began to research the matter, but received unclear or inconsistent responses

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from professional literature and from various payors. The coding experts who reviewed the case agreed that the CPT guidance was not clear. They also used APMA and CMS statistical data to show that a significant number of podiatric physicians in the United States continued to use the old CPT codes (64640, 64450) long after the CPT Manual was changed in 2009.

Based upon the above, the defense attorney wrote a letter to the federal government's attorney stating that the evidence showed there was no fraud or wrongful intent of any kind on the part of the insured and outlined the steps the insured had taken to obtain guidance on appropriate billing. He included reports from the coding and billing experts and petitioned the federal government's attorney to consider a reduction in the repayment obligation of the insured.

OUTCOME

In order to resolve the claim, the insured entered into a settlement agreement with the federal government in which he paid \$50,000. Given the potential exposure under the FCA was in excess of \$750,000, the settlement was very favorable. The settlement agreement was neither an admission of liability by the insured nor a concession by the federal government that its claims were not well founded.

RISK MANAGEMENT POINTERS

Medical coding and billing is complicated; ICD-10 and CPT codes are constantly evolving, as are Medicare coverage guidelines. To avoid liability for improper billing, podiatric physicians should:

Always use billing personnel (whether in-house or outside billing services) who are experienced and trained in podiatric billing and coding. If possible, use billers who are Certified Professional Coders.

Stay abreast of medical coding and billing rules by attending seminars, participating in APMA and state society events, and by reading the Local Coverage Determinations (LCDs) published by the Medicare contractor in their jurisdiction.

Implement a Medicare compliance program in their practices. Not only is this required by the Affordable Care Act, it is a critical means of detecting and correcting billing errors through self-auditing techniques.

Subscribe to listserves, which provide excellent expert advice on common podiatry billing matters.

Review office forms, including templates, superbills and the like, (whether paper or electronic) for currency and accuracy. Many errors occur because these forms are out of date, incorrect or not specific to podiatry. Many EMR software programs do a poor job of documenting common podiatry procedures. Medical record documentation is the key to surviving any Medicare audit or investigation.

- Barbara Bellione, RN, CPHRM, ARM and J. Kevin West, Esq.

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