



Client Alert

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Federal Government Accuses Hospitals Of Using EHRs To Commit Health Care Fraud

On September 24, 2012, five major hospital associations received a letter¹ from the federal government warning them that hospitals that misuse electronic health records (“EHRs”) to bill for services never provided will be prosecuted. The letter was issued jointly by the Attorney General, Eric H. Holder, Jr., and the Secretary of the Department of Health and Human Services (“HHS”), Kathleen Sebelius. The letter prompted a rapid response² from the American Hospital Association (“AHA”), which agreed that health care fraud must be prosecuted, but advocated that the government recognize that “more accurate documentation and coding does not necessarily equate with fraud.” The AHA also noted that it has made numerous requests to the Centers for Medicare and Medicaid Services (CMS) to establish national guidelines for coding, to no avail.

The federal government’s allegation is that “some providers are using [EHRs] to game the system, possibly to obtain payments to which they are not entitled.” Specifically, the letter alleges that hospitals may be “cloning” medical records by cutting and pasting one patient’s medical record into another’s, rather than individually verifying each patient encounter. The letter also contends that hospitals may be using EHRs to “upcode” the intensity of care or severity of a patient’s condition.

The remainder of the letter can only be described as threatening. It reminds the hospital associations that there has been an “unprecedented Cabinet-level effort to combat health care fraud and protect the Medicare trust fund.” The letter emphasizes that new tools are available to the Department of Justice, HHS, and the Federal Bureau of Investigation to prevent health care fraud, and then touts its prosecutions in 2011, which were “75 percent higher than in 2008.”

The AHA’s response pleads for guidance from CMS rather than unnecessary audits. The AHA urges the Attorney General and Secretary to halt “duplicative audits that divert much needed resources from patient care.” The AHA states that the flood of new auditing programs is “drowning hospitals with a deluge of redundant audits, unmanageable medical record requests and inappropriate payment denials.” The AHA also references its latest “RACTrac survey,” which shows that respondents are appealing more than 40% of their denials with a 75% success rate.

¹ <http://s3.documentcloud.org/documents/439406/hhs-doj-health-associations.pdf>
² <http://s3.documentcloud.org/documents/439868/aha-ltr-hhs-doj.pdf>

The federal government and hospitals both agree that EHRs can save money and lives when used correctly. Unfortunately, EHRs do come with shortcuts that, combined with human error, may result in coding mistakes. For example, EHRs have a “copy and paste” function. This function may be appropriate to use when inputting a patient’s personal history into a progress note. However, this function may result in inadvertent billing fraud if a past complaint is pasted into documentation for the current visit. Further, EHRs allow the use of “macros,” which let practitioners input a standard template for a procedure or evaluation. Macros can lead to billing for services never provided, or raise suspicion that the practitioner is not actually completing the procedure or evaluation due to the uniformity from one medical record to the next. To avoid an audit, practitioners should be attempting to individualize a patient’s EHR whenever possible so that it is obvious to a subsequent reader that the patient encounter actually occurred.

The catalyst behind the federal government’s letter is transparent—there has been a significant increase in Medicare reimbursements since the enactment of EHRs. As the AHA argued, this increase could be attributed to the fact that EHRs allow providers to enhance their ability to correctly document and capture codes that reflect a patient’s care. It must also be noted, however, that while the federal government has been urging providers to implement EHRs rapidly, it has done so without creating a national standard to be followed by hospitals, doctors, or even the software companies that develop the EHRs. A natural by-product of such rapid and inconsistent implementation may be coding and billing mistakes.

The letter from the Attorney General and Secretary will hopefully prompt a much-needed dialogue regarding the future of EHRs. In the meantime, hospitals should be on high alert for increased scrutiny of their billing practices

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