Compliance Dilemmas

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Course Objective
• Series of case studies detailing compliance issues
• Identify possible reimbursement issues under scrutiny
• Discuss the legal approach to cope with these compliance issues
• Develop a corrective action plan

Compliance Report
In anticipation of developing a compliance program, ABC Eyecare requested a compliance review to assess its current level of compliance with rules and regulations associated with billing practices and operational issues. This review was conducted by a billing consultant and a healthcare attorney. The findings reveal a series of issues to address.

1. Documentation and coding for complex cataract surgery
2. Documentation and coding for ophthalmic drugs
3. High utilization of diagnostic tests
4. Standing orders for diagnostic tests
5. Transportation services
6. Overpayment associated with a practice acquisition

Issue 1: Complex Cataract Surgery
• Medicare charts for claims submitted with 66982, complex cataract surgery, revealed:
  ▪ No clinical findings in exam note to support need for complex cataract surgery
  ▪ Templated operative notes did not describe any devices or techniques supporting complex surgery
  ▪ Used 66982 when anterior vitrectomy was needed
  ▪ Use of Trypan Blue

Financial Disclosure
• Alan Reider is a partner in the Washington, DC Office of Arnold & Porter Kaye Scholer LLP
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What did I do wrong?
What do I do now?
CPT 66982 - Complex Cataract Surgery

“Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (e.g., irrigation and aspiration or phacoemulsification), complex, requiring devices or techniques not generally used in routine cataract surgery (e.g., iris expansion device, suture support for intraocular lens, or primary posterior capsulorrhexis) or performed on patients in the amblyogenic developmental stage.”

Source: AMA CPT 2017

No clinical findings in exam note to support need for complex cataract surgery

- Examples:
  - Miotic pupil - does not dilate well
  - Other diseases - phacolytic glaucoma, weak zonules, iris or ciliary body abnormalities

Source: NGS Local Coverage Determination (LCD): Cataract Extraction (L33558) excerpt

- No clinical findings in exam note to support need for complex cataract surgery
- Templated operative notes did not describe any devices or techniques supporting complex surgery
- Used 66982 when anterior vitrectomy was needed
- Use of Trypan Blue

- The operative note indicates that a permanent intraocular suture or a capsular support ring was employed to place the intraocular lens in a stable position.
- The operative note indicates a capsular support ring was employed or an endocapsular support ring was used.
- The operative note indicates the use of micro iris hooks inserted through four (4) or more separate cornea incisions, use of an iris dilator device, synechloyis utilizing pupillary stretch maneuvers creation of multiple sphincterotomies with scissors, a sector iridotomy with suture repair of iris sphincter was performed, or a permanent intraocular suture, capsular support ring, or endocapsular support ring was used. . . .

Source: NGS Local Coverage Determination (LCD): Cataract Extraction (L33558) excerpt

- No clinical findings in exam note to support need for complex cataract surgery
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CPT 66982 - Complex Cataract Surgery

• CPT Assistant March 2016 response to inquiry regarding use of dye to stain capsule as support for 66982
• “the additional work of instilling and removing Trypan Blue dye from the anterior segment though an additional surgical step does not reach the threshold of physician time, work, or intensity necessary to report the complex cataract code.”
• Some, not all, MACs publish policies supporting use of dye as an indication for 66982

Source: AMA CPT Assistant — March 2016

• The operative note indicates dye was used to stain the anterior capsule.
• The operative note indicates Phacolytic glaucoma
• The operative note indicates a primary posterior capsulorhexis was performed
• The operative note or postoperative records indicate an extraordinary amount of work was involved in the preoperative or postoperative care.
• The operative note indicates an artificial prosthetic iris was placed in the eye.

Source: NGS Local Coverage Determination (LCD): Cataract Extraction (L33558) excerpt

What Advice Should the Attorney Give?

What did I do wrong?

What do I do now?

Issue 2: Documentation and Coding for Ophthalmic Drugs

• Chart review revealed:
  ▫ Incomplete documentation of procedures related to injected drugs
  ▫ Inability to reconcile drug log to payments received for drugs
  ▫ Drug units billed do not match HCPCS code descriptor
  ▫ Vials of Lucentis purchased reflect less than 1/2 number of Lucentis administrations performed and billed

Documentation and Coding for Ophthalmic Drugs

Procedure Note
• Preop and postop diagnoses
• Indications for surgery
• Description of surgery including location of injection
• Drug, dose, lot #, expiration date
• Discharge instructions
Create Inventory Tracking System
- Serial number each vial
- Create labels
  - Manufacturer’s invoice
  - Patient chart
  - Injection log book
  - Superbill and practice management system

Documentation and Coding for Ophthalmic Drugs
- Vials of Lucentis purchased reflect less than 1/2 number of Lucentis administrations performed and billed.

Potential Problems
1. Billing for Lucentis not administered
2. Billing for Lucentis when Avastin was administered
3. Billing for multi-dosed Lucentis

Issue 3: High Utilization of Diagnostic Tests
- Medicare Utilization review revealed high use of:
  - Fundus photography (92250)(32%)
  - Corneal topography (92025) (18%)
  - Tear osmolarity (83861) (42%)

What did I do wrong?
What do I do now?

Analysis
- Determine if there is a good reason for the high utilization
- Have an External Review of Services performed
- Identify potential overpayment
- Obtain Broad Analysis of all Services, beyond diagnostic tests
- Could I have known about this before the compliance review?

Common Ophthalmic Tests
Medicare Utilization Patterns (18 – Ophthalmology)

<table>
<thead>
<tr>
<th>CPT</th>
<th>Procedure</th>
<th>λ</th>
<th>CPT</th>
<th>Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>92134</td>
<td>Scanning Laser (retina)</td>
<td>26%</td>
<td>92250</td>
<td>Fundus Photo</td>
</tr>
<tr>
<td>9222x</td>
<td>Ext Ophthalmoscopy</td>
<td>16%</td>
<td>92235</td>
<td>Fluorescein</td>
</tr>
<tr>
<td>9208x</td>
<td>Perimetry</td>
<td>11%</td>
<td>92020</td>
<td>Gonioscopy</td>
</tr>
<tr>
<td>---</td>
<td>Biometry (A or OCB)</td>
<td>9%</td>
<td>83861</td>
<td>Tear osmolarity</td>
</tr>
<tr>
<td>92133</td>
<td>Scanning Laser (glauc)</td>
<td>9%</td>
<td>76514</td>
<td>Pachymetry</td>
</tr>
</tbody>
</table>

Frequency is per 100 office visits (%) on Medicare beneficiaries
Source: CMS data (2019), 18 – Ophthalmology
**92250 -- Fundus Photography**
- Bilateral
- Indication: serious posterior segment disease
- Repeated for progression of disease or new findings
- Requires physician interpretation and report

**92025 -- Corneal Topography**
- Computerized corneal topography, unilateral or bilateral, with interpretation and report
- Example of indications:
  - pre-operatively for evaluation of irregular astigmatism prior to cataract surgery
  - monocular diplopia
  - bullous keratopathy
  - post surgical or post traumatic astigmatism, measuring at a minimum of 3.5 diopters;
  - post penetrating keratoplasty surgery;
  - post surgical or post traumatic irregular astigmatism;
  - corneal dystrophy;
  - complications of transplanted cornea;
  - post traumatic corneal scarring;
  - keratoconus; and/or
  - pterygium and/or corneal ectasia that cause visual impairment.

Source: First Coast Local Coverage Determination (LCD): Corneal Topography (L33810) excerpt

**DED - Questionnaire**
- Do you have any of the following symptoms?
  - Blurry vision
  - Redness
  - Burning
  - Itching
  - Light sensitivity
  - Tearing
  - Foreign body sensation

Source: Tear Lab Dry Eye Questionnaire

**83861 -- Tear Osmolarity**
- Microfluidic analysis utilizing an integrated collection and analysis device, tear osmolarity
- Clinical Laboratory Improvement Amendments (CLIA)-Waived test
- Submit application to CLIA
- Billing 83861 RT and 83861 LT (2 lines on claim)
- Billing 83861 -50
- QW Modifier needed for CLIA waived test
- 2017 rate: $22.66 (national limit amount)

Sources: TearLab

**Issue 4: Standing Orders for Diagnostic Tests**
Review of the practice's policy and procedure manual revealed a series of “standing order” policies associated with diagnostic tests.
What Advice Should the Attorney Give?

Medicare Test Policy

42 CFR §410.32 Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(a) Ordering diagnostic tests. All diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem. Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary.

Pre-Exam Testing

• In an effort to promote efficiency, a consultant has recommended that your practice initiate a program of testing patients before they see your physician
  ◦ Your new cataract patients are examined by an OD and those who are diagnosed with cataracts will have pre-op testing, including the A-scan.
  ◦ Your new retina patients receive an OCT, fluorescein angiography, and fundus photo.
• Any problem with this approach?
• Does it matter whether the tests are billed?

Issue 5: Transportation

When the consultant and attorney arrived at the office to conduct their respective reviews, they noted a limousine in front of the office. They asked the office staff “Who is the celebrity in the office that arrived in the limo?”

Staff’s Response

“Our patients love our physicians so much that some who live as much as 50 miles away from our office wanted to return. These patients are elderly and since we are in a rural area, some had difficulty getting here, so we decided to offer transportation. When we advertised this service on the radio, we saw a spike in business from both established as well as new patients. Some came almost 100 miles, from places we never reached before. So we decided to expand our service, buy a limo, and hire a driver. And during the ride, we can promote some of the new services we offer at the practice. Isn’t that great!!!”

What Advice Should the Attorney Give?
Any problem with providing transportation services for patients?
  • Does the provision of transportation violate the Medicare prohibition against patient inducement?
    ▫ New versus established patients
    ▫ Van versus limo
    ▫ 50 miles versus 100 miles
    ▫ Rural versus urban area
    ▫ Advertising the availability of transportation
    ▫ Marketing the practice during the provision of transportation
    ▫ Any State law issues?

Issue 6: Overpayment Letter
  • Practice presents consultant and attorney with letter from Medicare demanding repayment of $100,000. Overpayment based on review of employed physician whose practice was purchased this year. Overpayment relates to period prior to acquisition.

What did I do wrong?

What do I do now?

How could you avoid or mitigate this problem?
  1. Acquire assets of the practice, not the practice itself.
  2. Do not acquire the physician's provider number.
  3. Perform billing and coding due diligence prior to acquisition.
  4. Include an Indemnification provision in the Purchase Agreement.
  5. Maintain an escrow account with funds from the purchase to cover future liabilities.
  6. Hold physician accountable in the employment agreement for any overpayment and recoupment related to pre-acquisition conduct.

Conclusion
  • Take compliance activities seriously
  • Remember that rules and regulations are not static
  • Stay informed
  • Develop a formal compliance program

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