

Incomplete and Delinquent Medical Records

Best practices for minimizing financial and legal risks **By Clay J. Countryman, Esq.**

A RECURRING hot topic is potential compliance risk to individual physicians and physician practices from having incomplete or delinquent medical records. This issue has been bubbling in the last few years because of increased audits by payers and new statutory requirements adopted under the Affordable Care Act (ACA) requiring providers to report and refund overpayments within 60 days from the date an overpayment is identified.

Physicians are realizing that incomplete records, resulting from their own errors or those of their partners, can lead to significant financial and other liability, as well as continuity of care issues for their patients, among other concerns. The reference to “incomplete medical records” commonly includes records for services by a physician or other provider that have not been completed by that physician, or records that are insufficient to support the services billed to a third-party payer.

According to Medicare, claims are determined to have insufficient documentation errors when the medical documentation is inadequate to support payment for the services billed. For example, during an audit, a Medicare reviewer could not conclude, based on the documentation submitted by a physician, that some of the services were actually provided, or provided at the level billed, or were medically necessary.

Examples of insufficient documentation errors identified in Medicare CERT audits have included: incomplete progress notes (unsigned, undated, insufficient detail); unauthenticated medical records (no provider signature, no supervising signature, illegible signature), and no documentation of intent to order services and procedures (incomplete or missing signed orders or progress notes describing an intent for services to be provided).

A common issue is the lack of a physician signature on medical records or orders that may result in a recoupment of an overpayment by a payer, such as Medicare. Under applicable Medicare guidelines, a physician may not add late signatures to an order. However, if an order for tests is unsigned, a physician may submit progress notes showing intent to order the tests. In regard to unsigned progress notes and other medical records, Medicare allows a physician to submit an Attestation Statement as the author of the medical record to authenticate the record.

Late Completion or Refund?

Physicians must consider several issues when completing medical records that have not been timely completed. Some practices, for example, may have physicians with several hundred incomplete records that date back several weeks or months. This type


of situation may indicate other systemic problems with a physician or a practice. A particular payer's rules would need to be reviewed to determine how far back a physician may go to complete records for services that have already been billed to a payer, and the proper way to complete a record. Most likely, the later completion of a record would be considered an amendment to a patient's record.

Unless the records can be completed or amended, a practice would need to consider refunding the applicable payer, such as Medicare, the amount of a claim's payment received by the practice that is not supported by a patient's medical records. Section 6402 of the ACA requires Medicare and Medicaid providers to report and refund overpayments within 60 days from the date an overpayment is identified. The law also created liability under the Federal False Claims Act for any person who retains any identified overpayments beyond this 60-day timeline.

Practices should also consider addressing the liability of its physicians for refunds based upon incomplete or insufficient medical records by particular physicians within the practice. In this scenario, a physician's practice is generally liable for any refunds to payers for claims that are submitted to third-party payers under the practice's provider number. The liability of individual physicians could be addressed in an operating agreement or practice bylaws, and an employment or professional services agreement for a practice.

A recent clarification by the National Practitioner Data Bank addresses whether a physician should be reported to the NPDB for failing to complete their medical records on a timely basis. The current NPDB Guidebook provides that a hospital's suspension of a physician's clinical privileges for 45 days for failing to complete medical records should be reported to the NPDB—if the suspension is a result of a professional review action and the hospital determines that the failure to complete medical records is related to the physician's professional competence or conduct and adversely affects or could adversely affect a patient's health and welfare.

In summary, physicians should consider adopting several “best practices” to minimize the financial and legal risks that may arise from incomplete or delinquent medical records. This applies to other physicians and providers affiliated with their practices.

The information in this article is intended for informational purposes only, and should not be construed as legal advice on the topics addressed. Clay J. Countryman, Esq., is a partner with Breazeale, Sachse & Wilson, LLP, in Baton Rouge, Louisiana. He may be reached at Clay.Countryman@bswllp.com. 

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