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Billing

CMS answers 7 key transitional care management billing questions

You've been able to bill CMS' new transitional care management (TCM) codes, **99495-99496**, for nearly two months. Make sure your claims get paid right the first time by listing the correct date of service and heeding other unreleased CMS billing guidance from an exclusive *Part B News* interview with the agency.

- **Don't bill the TCM code until 30 calendar days from the date of discharge or risk denial.** The service isn't completed until 30 days have passed, counting the date the patient was discharged from the hospital, a CMS spokeswoman tells *Part B News*. For example, because the TCM codes became effective Jan. 1, only 30-day periods beginning on or after then are payable. That means the "first payable

*(see **TCM codes**, p. 6)*

Practice management

Protect your practice – carefully – against negative online reviews

A recent court decision to throw out a doctor's well-publicized defamation case raises the question: What's the best way to deal with negative online comments about your practice?

Legal action against people who criticize your practice online can be expensive, protracted and unsuccessful, as

*(see **online reviews**, p. 7)*

Did you miss the TCM codes webinar?

You can still learn how to bring more revenue to your practice by correctly billing the new transitional care management (TCM) codes by buying the webinar on CD of **Earn New Revenue with Medicare's New Transitional Care Management Codes**. Visit *https://store.decisionhealth.com/Product.aspx?ProductCode=TA2349CD*.

• **Bill additional TCM visits if the patient is readmitted to the hospital within the 30-day period but only after the initial face-to-face took place.** Providers can report TCM codes as long as all the requirements for the service have been met during the initial 30-day period and after the second discharge, CMS says. But providers can only bill for the second TCM if they performed the face-to-face for the initial visit. For example, a second TCM service can be billed if a patient is discharged after a heart attack and is readmitted 20 days later as long as it's billed by the same provider. Remember: Only one physician can bill a TCM for a single patient during one 30-day post-discharge period, CMS says.

Note: If the patient dies before the 30 days are up and the face-to-face visit was already completed, bill an E/M matching the patient's complexity instead, advises Betsy Nicoletti, CPC, consultant with Medical Practice Consulting, Springfield, Vt. You may be able to support an increase in the complexity of the visit by documenting additional referrals and other extra work, Seyfried says.

• **Non-physician practitioners (NPPs) who meet incident-to requirements can bill TCM.** But registered nurses and licensed practical nurses can contribute to the non-face-to-face duties, such as making first contact with the patient, to fulfill the requirement, Nicoletti says. CMS recommends providers follow CPT guidance when billing for TCM. Primary care physicians and certain specialists can use TCM codes to report the many aspects of care required for a patient who has been discharged from a hospital. The codes each include phone/Internet contact, one face-to-face visit and other types of coordination of home health and/or therapy care required to put the patient on the mend and prevent readmission.

• **You can't furnish the TCM face-to-face visit on the same day as the discharge-management service.** "We wish to avoid any implication that the E/M services furnished on the day of discharge as part of the discharge-management service could be considered to meet the requirement for the TCM service that the physician or NPP must conduct an E/M service within seven or 14 days of discharge," CMS states in the final rule. However, the same provider may perform both discharge-day management and the TCM service, as long as each service takes place on different days.

• **Report additional E/M visits during the TCM window only if medically necessary.** That includes emergency room visits, CMS says in the final rule. – *Lauren C. Williams (lwilliams@decisionhealth.com)* and *Laura Evans (levans@decisionhealth.com)*

online reviews

(continued from p. 1)

the case of neurologist Dr. David McKee of Duluth, Minn., shows. McKee pursued the aforementioned defamation suit against the author of some negative online reviews for more than two years before the Minnesota Supreme Court reversed a lower court opinion and threw his suit out Jan. 30.

Per court papers, defendant Dennis Laurion objected to McKee's behavior while treating his father and criticized him "on various rate-your-doctor websites." Laurion included in his reviews a nurse's alleged observation that McKee was "a real tool" – one of six statements a court of appeals judged had merit for a lawsuit.

In reversing, the Supreme Court decided some of Laurion's statements were substantially true and others innocuous, or in the case of the "real tool" statement, a matter of opinion that "cannot be proven true or false."

Studies on online review sites in general show these reviews to be influential on consumer behavior. Harvard Business Review, for example, found that "a one-star increase on Yelp leads to a 5% to 9% increase in revenue." Studies on doctor review sites such as Vitals.com are less conclusive, but common sense suggests that bad reviews can't be good, especially when patients are looking for a new doctor.

"Sometimes the cranks get ignored," says Robert Markette, an attorney with Benesch, Friedlander, Coplan & Aronoff in Indianapolis. "If the complaint is 'I had to wait an hour,' that's probably not a big deal. But when they get patients to question your quality of care, that's another story."

"You have only so much real estate on Google," says William DiAntonio, founder and CEO of online reputation management firm *Reputation911.com*. "Who do you want to own it: You, unhappy patients or competitors?"

Experts tell us practices can take several steps short of legal action to protect themselves against negative reviews.

Reach out to critics – offline

Trying to answer a critic with your side of the story can be dangerous – particularly if you do it in the forum where

the criticism appears, says William Maruca, health care attorney with Fox Rothschild in Pittsburgh.

"The danger is escalating a bad situation into one that could attract more attention," says Maruca. "One unhappy review in a long list of favorable reviews is more likely to be overlooked or discounted than if there is a lengthy flame war on your review page."

Mike Hamblin, principal of the Law Office of Michael J. Hamblin in Royal Oak, Mich., who specializes in social media issues, suggests you reach the critics away from the review site – for example, via their posted address or by tracking them down on Google.

But the outreach might backfire: "They might go back [to the message board] and say, 'I heard from the doctor, he's really feeling the heat,'" he says. "But you should try, for instance, 'We understand you're upset; how can we help?' In my experience, if people feel offended, demeaned or that they've been treated badly, even a modest show of respect can work wonders."

Next step: Use low-impact legal tactics

If a critic is especially bothersome – or if you suspect him of being in the employ of a competitor and committing willful sabotage – consider getting him or the site that runs his reviews to take them down with a relatively low-impact legal tactic: a cease-and-desist order from an attorney. This usually presents a simple complaint, such as that the reviews violate the website's terms of service in some way, says Markette.

Even if the reviewer is defaming you, "a strongly worded letter from an attorney advising the poster about defamation liability and demanding a retraction" may do the trick, says Maruca.

Use positive news to combat bad

Reputation firms frequently advise that you combat bad reviews with good ones. If you promulgate your positives with an eye toward search engine optimization (SEO) – which firms like DiAntonio's will be happy to help you with – you may find that your good-news stories outweigh the bad.

Brent Franson, vice president of Reputation.com, battled one physician-client's critic by publishing on the Web a professional biography and personal website for the M.D. "that accurately reflected his numerous awards and accolades, his volunteer service, etc.," says Franson. "This truthful and current content quickly pushed down the negative reviews to the bottom of his second page of search results."

Franson also advises that doctors "appropriately and proactively reach out to patients and ask for accurate feedback on relevant review sites."

To get reviews from real patients, DiAntonio's company sets practices up with a tablet so patients "can give a review in their office," he says. "We register an IP address, and we notify the review sites that this is why all these reviews are coming from one place" so they won't think they're being spammed, he adds.

Even if the reviews aren't all good, it's still a net plus for the practice, says DiAntonio: "If I'm at Vitals.com and your last review is from a year ago, I don't know whether you're even still open for business," he says.

Asking for appropriate reviews is key and would exclude, for example, getting your staff to flood review sites with good notices.

"FTC [the Federal Trade Commission] has some clear rules on disclosure," warns Markette. "Their guidance says someone reviewing a product should disclose if they've received remuneration or have an interest – for example, if they're employed by the company they are reviewing."

Don't offer gifts or premiums to patients for giving reviews either, instructs Maruca: "If a patient is offended by such an offer, they'll post it and destroy your credibility and the credibility of any unprompted favorable reviews," he says. "Also, it may get close to violating the civil monetary penalty law's prohibitions against patient inducements."

The last resort: Legal action

When all that fails, legal action may be your last resort, though you can't be sure of a positive result. Opinions are one thing, but "if they disparage your professional capabilities falsely, it can be easier to prosecute," says Hamblin. "'Tool' is ambiguous, but 'Doctor Smith botched my surgery' isn't, and if you can show it's not true, you may have something."

The best course, naturally, is not to get to this point in the first place. "I think this underscores the need for good, old-fashioned customer service," says Hamblin. "Make sure patients are well-served. Things do happen, and sometimes someone's going to be unhappy, or you'll get a malcontent. … If there's a complaint, don't blow it off. Remember that doctors are in a service business too." – *Roy Edroso (redroso@decisionhealth.com)*