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Newsletter Article Reprint

Upcoding for Profit - Insurance Fraud?

March 2010

In an article published last year, we brought to your attention the increasing interest that IRS is paying to professional associations and corporations. This increased interest was subsequently confirmed when Dr. Alan Vance in West Virginia reached a settlement for the underpayment of taxes and was fined \$40,000 in addition to one year in federal prison and three years of supervised release. Now the Department of Justice, in addition to the IRS, is increasing its scrutiny of some dental practices.

In January 2010, the United States announced that it settled False Claims Act allegations against FORBA Holdings LLC, a dental management company that provides management and administrative services to 69 clinics nationwide known as "Small Smiles Centers." It was alleged that FORBA submitted claims to state Medicaid programs for medically unnecessary dental services or performed services that failed to reach professionally recognized standards of care on children insured by Medicaid, which is funded jointly by the federal and state governments.

To resolve the allegations, FORBA agreed to pay \$24 million (plus interest) and entered into an expansive five-year Corporate Integrity Agreement with the Department of Health and Human Services to put into place procedures to monitor quality of care and reimbursement processes. While allegations of the fraud by FORBA have been satisfied by this agreement, FORBA has also agreed to cooperate in the government's continuing investigation of individual dentists who may have violated professional standards.

So you may ask, how does this impact me? Well in these tough economic times there are still only two ways to improve your practice's bottom line profit – reduce expenses or increase revenue and most dentists have already been very diligent about controlling the costs of running their practice, squeezing the maximum benefit out of watching expenses.

The only other option to increase profits is to find ways to increase practice revenue. Seeing the number of patient visits continuing to decline with more patients deferring treatment, many dentists are listening to the siren's song of increasing collections by maximizing insurance coverage and reimbursement for certain procedures. While it is certainly within the rights of dentists to be fairly reimbursed for the procedures they perform, some consultants and dentists have resorted to creative coding in an effort to maximize insurance reimbursement. It can be a fine line, though, between obtaining the reimbursement you are entitled to and committing insurance fraud by "unbundling" and "upcoding" procedures.

The American Dental Association (ADA) defines unbundling of procedures as "the separating of a dental procedure into component parts with each part having a charge so that the cumulative charge of the components is greater than the total charge to patients who are not beneficiaries of a dental benefit plan for the same procedure." Upcoding is defined by the ADA as "reporting a more complex and/or higher cost procedure than was actually performed."

While physicians and hospitals have typically been implicated in unbundling and upcoding, the FORBA case shows the reach of the government's enforcement efforts into dentistry. And as private insurance companies feel the squeeze of profits and look to control their own expenses, the insurance companies are sure to scrutinize the claims being submitted to them for reimbursement.

As dentists, we might think upcoding and unbundling does not matter, because it is the insurance company who pays for it. However, the practice costs all of us money with no real benefit to anyone's health. When a Medicaid patient is upcoded, we all pay for it with our tax dollars. The effect on private insurance companies will be evidenced by raising your patients' premiums or reducing benefits and reimbursement to you – the dentist.

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The practice of upcoding procedures to bypass insurance company reimbursement limitations and increase practice income is certainly being watched by insurance companies and regulatory agencies. Due in part to sheer numbers of dentists, and in part to the absence of Medicaid payments in most dental practices, upcoding still flies under the radar of most federal investigations. However, state insurance departments and individual insurance companies do not work with the same monetary thresholds. It is not unreasonable to assume that as more focus is placed on medical and dental insurance policy, flagrant disregard for proper treatment and reimbursement protocol will be a focus in the future.

In the FORBA case, it was the result of complaints by individuals, “whistleblowers” that initiated the government investigation. Increasingly, patients are being asked to report instances of upcoding to government agencies and insurance companies. The ongoing government investigation in the FORBA case can only mean that the individual dentists are being scrutinized as complicit in the fraud.

Each dentist has the ethical and legal responsibility to ensure the integrity of treatment provided to patients as well as correctness of the insurance billing process. Committing insurance fraud can cost you more than a fine, it can cost you your license to practice dentistry.

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