

## **The inside story of a doctor who quit over EHR Upcoding**

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Most physicians attempt to bill claims correctly and with due diligence. There are, however, those who engage more nefarious intentions that can be harmful to their practice and suck in unknowing doctors.

That's what happened to me and it's why I resigned from the practice — even at the cost of being sued for breaching my contract. And I'm not the only doctor who did.

### **Behind the scenes**

Many of us who work as independent contractors or employees get paid on an hourly basis for time served in the emergency room or urgent care setting. That said, as an independent contractor, we are held liable for false claims at higher scrutiny than employees of the entity, who will likely be protected during audits.

I signed on with an urgent care center in a three-year arrangement dictating that if I broke the contract and left early I would have to pay \$22,500 plus \$1,200 for each of the 36 shifts I was slated to work in the future 60 days.

At the time I signed the contract, the clinic had a certified coder on staff and we were using paper charts. In the next year, an EHR was implemented and we were told that the certified coder would personally review the charts regardless of what the EHR system coded.

That's when things took a turn for the worse: The practice's administration, including a part-owner, started rigging the EHR system to upcode claims to a 99215. They did this by having the triage staff enter in three complaints and ensure that every review of systems was addressed at each visit.

When I questioned the high level of codes being generated by the shiny new EHR, the practice owner indicated that the certified coder was reviewing and making adjustments accordingly. Management insisted that they wanted a very thorough record, which charted each ROS every time the patient was seen.

What's more, according to the triage staff, they were coerced into documenting three complaints even if the complaints were not actually verbalized by the patient. In addition, the owner indicated that physicians should document all previous and current diagnosis codes on the chart in the encounter. I explained to her that this should be in the problem list and not all the diagnosis should be included for billing purposes. She rejected the idea of a problem list and indicated those codes needed to be in the diagnosis and plan section of each encounter.

This really raised my suspicions and I sought to talk to the certified coder and office manager for clarification on coding adjustments.

### **Consequences**

Personally, I could not in good conscious allow any additional medical claims filed under my provider number without being able to ascertain that it was being used appropriately. But there's more at stake here than a good night's sleep or peaceful conscience.

Violation of the False Claims Acts can result in civil penalties from \$5,000 to \$11,000 per fraudulent claim. In addition, the provider is subject to paying back three times the amount owed from the fraudulent claim. Of course this does not include your attorney fees to defend yourself against such allegations and loss of income due to the time spent on such matters.

Physician's worry about medical malpractice suits all the time; on many occasions, however, this is the least of their worries and they just don't know it. Medical malpractice insurance does not pay for fraudulent claims. This is why an ounce of prevention is worth a ton of cure as your reputation, medical license and provider numbers can be put at risk without your knowledge.

"How can that happen to me?" you ask.

Well, if you "put your head in the sand" and don't take notice you, too, could be stuffing the pockets of your employer and be held liable for money you did not know they were billing for.

In other words, you can be hung out to dry in the wake of RAC audits.

I write that as one who's been there.

### **Barred from my own patients' records**

On or about the time I started to grow suspicious about the upcoding, I got word that Blue Cross and Blue Shield was conducting an audit of the physician owner. I was barred and denied access to my billing records at this clinic by the administration and the billing staff. The certified medical coder was told not to speak to me at all.

But I was told in confidence that the physician who owned the practice had to recently pay back a sum of money to Blue Cross and Blue Shield and the certified coder, who was fired, eventually told me of her concerns about billing fraud. She was barred from making the correct coding adjustments.

The physician who owned the urgent care unit, meanwhile, countered that it was the coder who had made mistakes, hence the termination. In light of his statement, I asked three times to see my billing records and he said he could not let me do that.

When I pressed as to why, the owner answered that it was for financial reasons. Even though I stressed that I could not put down diagnosis codes that were not addressed during a clinical visit, the physician owner was visibly upset, disagreed with me and even demanded that I comply.

At that point, I was being held hostage by an employment contract — until, that is, I managed to find out that some of my charts had been edited with additional diagnosis claims I did not authorize. I could not let that happen and resigned immediately.

A colleague and I are now being sued by the clinic for "breach of employment contract" for terminating our relationship with them early; the clinic is seeking damages in excess of \$60,000 as well as attorney costs.

### **Lessons learned**

It is important to know your rights when entering into an employment contract with an entity and ensure that you have access to your billing records set forth by the Medicare rules.

Medicare clearly indicates that during reassignment of benefits physicians can have unlimited access to their billing records.

If an employer is not amenable to letting you see your billing records, you need to run away from this relationship as fast as you can.

Further, it is imperative that you get involved in the integrity of the billing. Otherwise, practices can use your provider number to upcode and bill false claims at your personal liability.

I would rather face a civil lawsuit concerning breach of employment contract than face federal charges of Medicare fraud.