



The code war

The ICD and why you should care about a big change on the horizon



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Coming soon to a courtroom near you:

“Mr. Expert, can you tell us what upcoding is and whether you found it in Dr. Smith’s billing for treating the plaintiff?” the defense lawyer asked her medical-coding expert.

“Upcoding is an industry term. We sometimes see doctors use more expensive billing codes, known as ICD codes. Billing can be nuanced. Many procedures can be coded different ways. Here, I reviewed the treating doctor’s billing. Prior to the injury, he performed a meniscal repair surgery on the plaintiff’s left knee. It was coded under a standard reimbursement rate. In this case, the doctor performed a meniscal repair surgery, which he opined was caused by the accident. He coded this surgery differently – with a code that is reimbursed at twice the prior rate. This triggers our suspicions.”

The plaintiff’s lawyer squirmed. A treating doctor, typically above reproach, was being hammered.

A brief history of the ICD

The International Statistical Classification of Diseases and Related Health Problems (called ICD codes), classify medical events and treatment, and are used for billing. They date back to 1893 when a doctor introduced a list of cause of death classifications. His system expanded. In 1948, the World Health Organization took it over, releasing ICD-6. Since then, the ICD has been updated several times. ICD-10 was released in 1994. Most countries use ICD-10. ICD-11’s release is scheduled for 2015. But the U.S. is still using ICD-9.

Within a version are variants. These variants use abbreviations. For example, the U.S. uses ICD-9-CM, where CM stands for Clinical Modification. The U.S. was supposed to switch to ICD-10-CM in October 2013. The Department of Health and Human Services delayed the transition to ICD-10-CM to October 2014.

Code warriors

Health-care providers chart information about a patient. The chart is then given to medical coding. The coding is not done by the treater who did the care. Coders are separate professionals trained to read charts and code the treatment. Coders work apart from medical professionals. Some coders work for a doctor’s practice group or a hospital. Others are outsourced. They have a set amount of records that they are expected to get through per day. They do not typically interact with the treater who charted the information. This creates an opportunity for errors.

Software used

Coders use software to do their coding. About 200 different programs exist to do coding. The programs have an impact. If coding becomes an issue in your case, you will want to know the program used, the version and who does the coding.

ICD-10’s expanded coding

There is a greater selection of codes for a specific injury in ICD-10. For example, ICD-9 may have had one code for a femur fracture. ICD-10 has many: they specify the fracture location, distal or proximal, and type of fracture. Helpful, yes?

Yes and no. Medical charting is currently not detailed enough for coders to accurately code in ICD-10. A survey found one-third of records were sufficiently charted to code the record. This translates to significant growing pains when ICD-10-CM is implemented. Treaters will have to take more time to chart (a good thing). Records will be kicked back when the information is lacking. The industry expects a six-month industry-wide slowdown – marginally – to adjust to ICD-10-CM’s impact (so if you think Kaiser’s billing takes a long time now, just wait.)

ICD-10’s third-party billing codes

ICD-10 also built in cause codes and third-party billing codes. So now when your client presents at a hospital, the paramedics list the cause of injury as car crash, and the coders capture the data. The lien notice hits the patient’s mailbox before she’s home.

Upcoding

Third-party billing codes are fertile ground for coding bias. Coding can be nuanced. Several codes might apply to the same injury. Hospitals are reimbursed at one rate by HMOs. But they are usually reimbursed at higher rates from third-party coverage like automobile insurance. The coder may experience a bias to upcode incidents where reimbursement rates might be higher.

Billing experts

This brings us to billing experts. Defense lawyers, particularly those with medical billing fraud exposure, have started using billing experts. These experts look for billing inconsistencies. At first, they sought to reduce the past medical costs. Now, they aim to tarnish your treating doctor as a fraudster. Neither is good news. When a medical billing expert appears on an expert disclosure, you have a problem.

Taking a stand

Back to our squirming plaintiff’s lawyer. On rebuttal, he called the doctor’s office manager. She demonstrated that all



medical coding was outsourced to a company that the office did not directly contact. She acknowledged the error in the billing, apologized, and corrected the billed amount. Deflection and deflation. The treating doctor's reputation restored.

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of Trial Advocates. He wishes to recognize Amy Eddy, of Bottomly, Eddy & Sandler, PLLP for covering this interesting issue at the Belli Society Seminar in July 2013.

