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American Academy of Pediatrics

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Understanding Adolescent Confidentiality As It Relates To Billing

American Academy of Pediatrics Committee on Coding and Nomenclature

Background

There have been ongoing discussions at the American Academy of Pediatrics (AAP) regarding the ability to ensure adolescent confidentiality in the billing process. This started in 2009 with other key organizations including:

American Congress of Obstetricians and Gynecologists (ACOG)
Center for Adolescent Health and the Law
Society for Adolescent Health and Medicine
National Institute for Health Care Management
Guttmacher Institute

These key stakeholders were brought together to discuss the disclosure of confidential health care services and opportunities for collaboration. Among several complex topics discussed, a common theme was how to bill for health care services, and comply with the legal issues related to consent and disclosure.

The AAP Section on Adolescent Health wanted to create a *Current Procedural Terminology* (CPT®) modifier to establish infrastructure to allow suppression of Explanation of Benefits (EOB) forms following the submission of claims involving confidential adolescent health information. Adolescents and young adults indicate that the provision of confidential care is essential for them to access sensitive health care services. Without assurance of confidentiality, many adolescents and young adults will forego needed screening and treatment of sexually transmitted infections (STIs), family planning services, and mental health and substance abuse screening and treatment even when protected by state laws. Therefore, physicians need a mechanism to communicate to third party payers the need for special treatment of claims.

Currently, many commercial health plans routinely send to the policy subscriber an EOB that indicates the services provided, including the office visit, labs, or other services which were indicated by the presenting complaint or diagnosis determined by the visit. EOBs and other mechanisms of notification are intended to communicate billing and insurance claims information to protect policy holders and insurers from fraud and abuse but can have unanticipated negative consequences for adolescents and young adults seeking confidential health care services. The proposed modifier would identify the particular service as all or partly

confidential, allowing third party payers to appropriately suppress information sent to the policy subscriber.

Carrier Perspective

As part of the discussion on a code proposal for confidential adolescent health care services, AAP staff contacted some national carriers to get their feedback on the proposed modifier. They indicated that their sharing of information is dependent upon the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as state laws. While national carriers have a process to assure that confidential communications occur when requested by the adolescent or custodial parent, the degree to which the carriers may impose this process varies by carrier and is dependent upon the relevant state law(s).

Key Stakeholder Input

Before submitting a proposal for the new CPT modifier, AAP contacted other specialty societies to obtain their approval. The American College of Physicians (ACP), the American Osteopathic Association (AOA), ACOG, and the American Academy of Family Physicians (AAFP) were all very supportive of the concept.

However, they also had some valid concerns, including:

1) Whether HIPAA and state laws allow the payers to not notify the insured of benefit payment (ie, issue the remittance to the insured) beyond what HIPAA has indicated regarding an adolescent who makes a direct request to avoid potential harm?
2) If this can be done and a physician practice either fails to submit the modifier or their clearinghouse drops it from the claim, what is the physician's liability?

Due to these compelling issues, AAP sought legal review for the proposal.

Results of AAP Legal Review

AAP legal review advised that a “simple HIPAA amendment” would be required before an adolescent confidentiality modifier could be pursued. The ultimate goal of having such a modifier would be to trigger the suppression of a claim in order to prevent confidential adolescent health care information from being inadvertently shared with a parent/legal guardian.

AAP Committee on Coding and Nomenclature (COCN) Position

There is nothing “simple” about a HIPAA amendment given that such a statutory change would be very challenging. More importantly, even if such a modifier was in place, it would give providers a false sense of security that the confidentiality would be maintained since it relies solely on the compliance of payers. And, since HIPAA does not currently apply to all payers,

significant gaps would exist in the confidentiality framework. Such a modifier would ask payers to treat a claim differently yet there is no way to enforce compliance.

Getting STI testing included on the Bright Futures United States Preventive Services Task Force (USPSTF) list might be a suitable alternative due to the fact that use of CPT modifier 33 (*preventive service*) triggers suppression of co-pays. However, since STI testing is not purely "preventive," it would not qualify since the modifier 33 can only be placed on preventive services.

Therefore, it is the COCN position that a CPT modifier should *not* be pursued for purposes of ensuring adolescent confidentiality in adjudication of claims.

References

State Policies Affecting the Assurance of Confidential Care for Adolescents

This report discusses at length state laws, issues with EOBs, as well as the differences in Medicaid and Medicaid Managed Care use of EOBs for services that might require confidentiality.

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