



Weekly Auditing and Compliance Tip

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So, How Do You Decide If a Service Was Provided?

[Click Here to Listen to This Week's Audit Tip](#)



An earlier coding tip explained that the oft-repeated "if it isn't written, it wasn't done" is good risk management advice, but not a legal truism.

When the code accurately describes the level of service provided to a Medicare patient, it's usually not necessary to refund money if the service was rendered as billed. So how do you determine if the service billed was really provided?

It should go without saying that documentation, or lack thereof, isn't *proof* of anything. A lost medical record does not prove the service never happened, just as a fully documented exam does not remove all doubt that one occurred. There could easily be some sort of template error that resulted in exam components being recorded even though there was no exam at all. That said, judges are likely to give some presumption that documentation is accurate and it's usually more challenging to demonstrate that services were provided when there are shortcomings in the documentation.

One of the first steps is to focus on the big picture rather than the specifics of any one encounter. Gather production data about the physician under



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review and compare it to other physicians in the group, the state, and the nation. Are the RVU's consistent with the physician's schedule? If he or she is scheduled full time, and has RVU's at the 75% percentile, that isn't very alarming. If the physician is scheduled half-time and has RVU's two times the 90th percentile, that is quite concerning. Note that I am far less focused on whether the bell curve of codes selected by the physician is consistent with national norms. A physician who has nearly exclusively high-level visits (99215, 99233, etc), but sees fewer patients is less concerning to me than a physician who has only 99213 visits, but whose RVU's far exceed peers. If you don't use production data in your compliance efforts, you may be missing the single most important tool for both evaluating compliance and determining the efficiency of your operations. Extenuating factors, such as the physician's schedule and patient load should be considered as well. It's often tempting to dismiss unusual production as a function of a unique patient mix. While that is certainly possible, never accept claims of "terminal uniqueness" at face-value; gather more objective data. While this will include discussing the situation with the physician, you should also seek input from staff who work closely with the physician. The care team should have a good sense of how a typical encounter occurs.

Many review tools focus on the typical time associated with an encounter. I think that typical times are not terribly helpful. I have watched a physician perform a 99213 visit in under 5 minutes, despite a "typical time" of 15 minutes. I have witnessed a 99214 performed in 6 or 7 minutes, despite a typical time of 25 minutes. The real question is how long it takes the physician under review to perform the code in question. If you have any doubts, have someone who is very familiar with the guidelines shadow a physician for a day. Observe whether the physician fails to document key components of the E/M service. Watch and see how long it takes to perform different types of visits. By comparing the physician's coding, RVU's and documentation on that day to days where no shadowing is done it's possible to get a keen sense of whether the physician's activities during the shadowing were representative of his/her practice. If your review determines the codes billed accurate reflects the level of service provided, there is a compelling legal argument that no refund is necessary for most payors. By contrast, if you conclude that services were billed at a higher level than provided, a refund is likely necessary.

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Our **2-day ONSITE** Medical Auditing Bootcamps are scheduled as follows:

November 16 & 17: Tallahassee, FL

We also offer this bootcamp as a **5 week LIVE ONLINE Saturday course**. Each class is 3 hours and 15 minutes in length. Our next online course begins November 11, 2017!

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Our **2-Day E&M Auditing Bootcamp** is an accelerated auditing training specific to E&M auditing. Learn about audit policies, get clarity on documentation guidelines, medical decision making, medical necessity and more. Plus, during this training program you will have the opportunity **earn our NEW CREDENTIAL - Certified Evaluation and Management Auditor (CEMA)**!

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October 10 & 11: Phoenix, AZ
November 7 & 8: Cincinnati, OH
November 28 & 29: Salt Lake City, UT
December 4 (1 day session): Orlando, FL

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October 30, 31, & Nov 1 from 1pm - 5pmEST each day!

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Join NAMAS for the 9th Annual Auditing & Compliance Conference December 2017 in Orlando, FL!

In short, when documentation is lacking, determine whether the service was provided and not documented - in which case there is generally no overpayment - or whether the service was truly upcoded, in the sense that the bill did not reflect the service performed. While under documentation creates challenges that you may be able to resolve satisfactorily, true over coding, billing for a higher level of service than was actually provided, is nearly impossible to defend.

Along those lines, choose your words carefully. You should never use the terms "over coded" or "under coded" based solely on a documentation review. Unless you know whether the services were truly provided as billed, over and under documented are much more accurate descriptors. Or better yet, describe "Documentation supports the code billed," "Documentation supports a higher code than billed," and "Documentation supports a lower code than billed."

By spending the time to determine what work your physicians are actually doing, you can refund in situations where your claims overstate your work while keeping money for medically necessary services that patients have truly received.

This Week's Audit Tip Written By:



David Glaser, JD
David Glaser is a Shareholder in Fredrikson & Byron's Health Care Compliance Group, and co-founded its Health Care Fraud & Compliance Group.

NAMAS 9th Annual Auditing & Compliance Conference Speaker Spotlight



Conference Information

Pre-Conference: Tuesday, December 5
Conference: Wednesday, December 6 - Friday, December 8
Venue: Loews Sapphire Falls Resort
Orlando, FL

[Click Here to View the Conference Agenda](#)

Learn from the best in the industry, network with your peers and visit with our hand picked group of industry relevant exhibitors all in the gorgeous Caribbean inspired backdrop of the Loews Sapphire Falls Resort

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- Registration to our EXCLUSIVE VIP Brunch & Session occurring the morning of Wednesday, December 6 before general session begins. This exclusive training will be presented by Frank Cohen
- Admission to our VIP ONLY EVENT - occurring the evening of Thursday, December 7. Enjoy a relaxing evening of entertainment, dancing, food and networking in the Caribbean inspired Sapphire Falls Resort
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NAMAS Calendar of Events

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Auditing & Compliance Conference, Gary Lucas will be presenting the following sessions:



Gary Lucas, CPC, CPC-I
Vice President, Association
for Rural & Community
Health Professional
Coding

- 2018 CPT and HCPCS-2 Updates for FQHCs
- E/M and Primary G Codes for FQHCs
- 2018 ICD-10 CM Updates for FQHCs

Each week, we will spotlight a conference speaker and the session(s) he/she will be presenting.

Join us for this year's conference **December 6-8, 2017** in **Orlando, FL** at the Loews Sapphire Falls Resort!

Click the image above to learn more about conference

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**Upcoming
Webinar
Sessions**



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NAMAS is proud to offer the following webinars in October:

**Dissection of a False Claims Act Case
(Compliance Webinar Series)**

Speaker: David Glaser, JD
October 17, 2017
2pm EST

**Hands On: Auditing Office Based E&M Services
(Hands-on Webinar Series)**

Speaker: Liz Wilson
October 24, 2017
2pm EST

**Will Your Malpractice Coverage Help Protect You
In the Event of a Government Audit -
Rescheduled Session
(Auditing Webinar Series)**

Speaker: Maxine Collins
October 26, 2017
2pm EST

If you are interested in registering for the webinar above,
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