

Insights

Medical Record Documentation: Is it a “No” or a “Not Completed”?

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The United States Department of Justice (“DOJ”) issued a press release regarding a recent \$2 Million settlement related to allegations that a provider violated the False Claims Act by submitting inflated and upcoded evaluation and management (“E/M”) claims to Medicare and Medicaid, over a five year period. The DOJ alleged that the provider inflated and upcoded E/M claims by setting the default answer to “no” on the electronic medical record, when an examination was not conducted.

The provider and its related entities (“CareWell”), own and operate urgent care centers in Massachusetts and Rhode Island. E/M services are billed and paid at urgent care centers based on the level of E/M service performed and number of body systems reviewed. Generally, the more complex the patient, the more body systems reviewed, the higher level of E/M service performed, the higher the payment amount.

The DOJ alleged that CareWell submitted false claims for E/M claims by:

- Mandating that medical personnel examine and document at least 13 body systems during medical history inquiries, and at least nine body systems during physical examinations, regardless of the patients’ medical complaint or symptom;
- Instructing personnel to use encounter plan templates, loaded onto electronic medical record (EMR) software, containing “yes or no” questions and to ask patients regarding body systems, regardless of medical necessity;
- Using the default “no” response to each inquiry in the template, even if medical personnel failed to ask a patient every question in an encounter plan template;
- Using the default “no” responses to assert that the associated body system had been examined and billing the E/M service accordingly; and
- Failing to reduce the amounts of its claims for services performed by *unsupervised* nurse practitioners.

The settlement is the result of allegations brought in a whistleblower lawsuit filed by a former employee, under the *qui tam* provisions of the False Claims Act. A copy of the press release is available at the following website: <https://www.justice.gov/usao-ma/pr/carewell-urgent-care-center-agrees-pay-2-million-resolve-allegations-false-billing>

These allegations and resulting settlement underscore the importance of reviewing electronic medical record templates and ensuring that all responses, whether actively selected or set by default, properly reflect the services performed and do not automatically create the implication that a service was performed when it



actually was not.

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