Breakout Session 4F
Current Issues in Coding Ethics

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Reproductive Medicine Administrative Consulting, Inc.
West Orange, New Jersey
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Learning Outcomes

• At the end of this session, attendees will be able to:
  – Recognize the factors that contribute to ethical dilemmas in coding
  – Elaborate on the relationship of ethical standards to compliance programs and other legal obligations
  – Develop a clear understanding of current issues in health care billing and coding that have ethical ramifications
The definition of *coding* changes things

- Our understanding of what coding is may influence the way we look at the process:
  - Medical coding is basically the process of applying formal, standardized medical codes to patient medical records (*Medical Insurance Coding, 2009*).
  - Diagnostic and procedural information is translated by medical coders into easy numerical codes that can be electronically processed for payment by third party payers... (*Dunn, 2008*).

- Millions of people get sick every day. The kinds of illnesses they suffer range from mild to severe. Classifying these conditions...is done with medical coding and billing. In order for a process of this magnitude to be successful, it has to be universally accepted (*Moss, 2009*).
I see coding as...

TELLING THE PATIENT’S STORY.

The parts of the story

- Who
- When
- Where
- Why
- What
- How
Why defining *coding* is important

- Is coding...
  - An exercise?
  - A task?
  - A story?

- Seeing coding as the telling of a story is more likely to produce an accurate (and ethical) result

Now, we need to define *ethics*

- Ethics can be viewed in three different ways...
  - A field of study
  - A set of rules and guidelines
  - A set of personal beliefs and associated behavioral principles
Defining ethics

- A field of study
  - Identifying the source of beliefs

Two primary types of normative ethics

- Deontological ethics
  - “Duty”
  - Non-consequentialist
  - Forms of deontological ethics
    - Rights theory
    - Modern rights theory
    - Justice theory
Two primary types of normative ethics

• Teleological ethics
  — Utilitarianism
    • Ethical egoism
    • Ethical altruism
    • Traditional utilitarianism
  — Profit maximization
  — Ethical relativism
  — Consequentialist ethics

Why ethics matter

• Ethics matter because people need to rely on the consistent responses of others in dealing with difficult situations
• Unethical behavior...
  — Introduces financial instability into society
  — Damages relationships
  — Produces worse results than ethical behavior
Where we are at now...

<table>
<thead>
<tr>
<th></th>
<th>Complete</th>
<th>A Lot</th>
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<td>Teachers</td>
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<td>10</td>
<td>42</td>
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</tbody>
</table>

Source: Barna, 2002.

So why do we do this?

WME vs. S&P 500 vs. FTSE 100

- S&P 500
- FTSE 100
- WME Index
Where do *ethics* come from?

- Media
- Friends
- Family
- Education
- Religion
- Ethnic Background
- Personal Role Model or Mentor

Are *ethics* in business different?

- Organizational Ethics
- Occupational Ethics
- Societal Ethics
- Individual Ethics
- Business Ethics
How committed are we to ethics?

What is an ethical dilemma?

• An occasion when a person is at a point of decision concerning a conflict between his or her values and the action he or she will ultimately take.

• Several requirements for an ethical dilemma
  — Values
  — A conflict between the values and the proposed action
  — Pressure (internal or external) to act in opposition to the values
Applying ethics to the field of coding

CURRENT ISSUES IN CODING ETHICS

Would new Documentation Guidelines for E/M services improve coding ethics?

• The issue: The selection of the appropriate E/M code level
• The challenge: Do the Documentation Guidelines solve or create ethical dilemmas?
• The situation:
  – We are in 2012, but our guidelines are from 1995 & 1997
  – Some say they are excessively complex
### New Patients/Consultations

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<tr>
<th>New/Consults</th>
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<th>99202/99242</th>
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<td>HPI</td>
<td>1-3 elements</td>
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<td>≥ 4 elements OR ≥ 3 chronic or inactive conditions</td>
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### Office or Other Outpatient Services

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Case Study: Peter

- **HPI:** Peter reports that he ran into a chain-link fence about two hours ago, resulting in a laceration on his right arm, just above his wrist. Initially there was heavy bleeding (as reported by the patient), but pressure on the wound stopped the bleeding in less than five minutes. Patient reports moderate pain associated with the injury. Patient’s mother provided him with acetaminophen before deciding to bring him to the office for evaluation.

- **ROS:** Integumentary: Simple 3 cm laceration on lower part of patient’s right arm. No loss of consciousness during collision with fence. All other systems negative.

- **PFSH:** Peter sustained a 5 cm cut on his foot last year while fishing. Tetanus vaccine was provided at that time. Grandfather has stage 4 lung cancer.
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Is there a different way?

• Providers are beginning to understand what needs to happen to “enhance” their documentation
• The documentation meets all the Documentation Guidelines standards
• The dilemma? Does the documentation reflect that which was medically necessary to adequately diagnose and treat the patient’s condition?

Is there a different way?

• Resolving the dilemma: Educate providers so that they understand that checking boxes or making particular statements is not the answer.

• The coding should match the documentation of the medically necessary service…. The documentation should not match the coding.
Do EHRs produce *more* ethical or *less* ethical coding?

• EHRs are a wonderful thing
  – They produce infinitely more legible medical records
  – They facilitate better communication between health care entities, reducing medical errors and reducing costs
  – They supply guidance to providers in determining coding levels

Do EHRs produce *more* ethical or *less* ethical coding?

• EHRs are a terrible thing
  – They supply guidance to providers in determining coding levels
  – The copy and paste function can result in voluminous records that don’t represent what really happened during the encounter
  – Improper usage actually creates records that are harmful in documenting the patient’s medical care
In the old days...

1/8/11 Follow Up

- 1/6/11 an Wax
- Rec E. P. L. B. in 6 mo - 2 yrs

• This was billed as 99214
  – It was a follow up pap smear
  – There was an abnormal pap 3 months earlier

Today

99214-25
58300
76830

PUBLIC: JANE
PATIENT: 25634
DOS: 11/29/2011
Age: 44

CC: Fibroids

HPI: DUE: 1/10/11: Periods irregular. Heavy

Irritable Bowel Syndrome: 10-15 times per day. Sleeps 8 hours. Diarrhea in last two

ROS: No significant history of surgical procedures

PMH: G1P1, 24-mo grace, regular monthly

Last Pap: 12 months ago- normal
dCervical smear: Normal

FEC: Single-1200, reproductive, occasional EMT

FIT: Rectal bleeding at age 64, bone cancer

Status: 1 sister-diabetes; 1 brother, 3 sisters all well

Vital: BP 121/71

PH: Well nourished and well developed in no acute distress. Aorta 10 cm. Hair and nails

Skin: 10 cm. Hair and nails. Chest is CTA. Heart is normal. BP 121/71, no abnormality.

Cervix: 10 cm. Hair and nails. No abnormality. No tenderness. No uterine pathology.

Procedure: Normal. Cervix was examined. No abnormality. No uterine pathology.

A/P: Uterine fibroids

FIG in two weeks with EMB results
Consider hysterectomy, possibly laparoscopic
It gets worse

Where are we now?

• EHR implementation has historically been slow
  – The technology is expensive
  – Health care economics is not conducive to the purchase/implementation process
  – Physicians aren’t knowledgeable about technology that isn’t directly tied to patient care
  – A positive Return on Investment (ROI) has not been consistently demonstrated
Where are we now?

• The game has changed significantly...
  – The Federal Government is funding EHR installations that meet “meaningful use” guidelines
  – This has dramatically increased the number and speed of EHR installations

What are the ethical issues?

• For providers...
  – Are they willing to adapt/modify their systems to obtain maximum benefit from the EHR?
  – Are they willing to understand the coding component?
    • Ensuring appropriate documentation
    • Ensuring appropriate E/M coding levels
What are the ethical issues?

• For software vendors...
  – The marketplace exploded overnight through government intervention. Sales became easy
  – Does the program facilitate appropriate collection of H&P and examination elements?
  – Does the program adequately recognize the role of medical decision making in E/M code selection?
  – The problem with *meaningful use* and coding

What are the ethical issues?

• For the government...
  – Since it is prescribing the requirements for EHRs, its role in health care is increasing
  – Has a conflict of interest developed?
    • The government establishes guidelines for the tool that creates documentation and contributes to code selection
    • The government audits that documentation, identifies alleged fraud and abuse, and levies fines and other penalties
Health care reform and coding ethics

- Greater access to care
- Reduced cost increases
- More efficient care delivery
- Reduction in insurance premiums

What’s the easiest solution for health care providers?
- Increase the average revenue per patient
- How do you do that?
  - Bill a higher level of E/M services
The development of a perfect storm

The means by which to develop supporting documentation (EHR)

The need for additional revenue

Patients insulated from the real cost of care

THE CURRENT SITUATION

Won’t mandatory compliance programs solve ethics problems?

• The Patient Protection and Affordable Care Act (PPACA) was signed into law on 3/23/10.

• The focus of the media on this legislation is on the expansion of the availability of health insurance coverage

• However, there is an element in which the current voluntary compliance programs will become mandatory for all providers participating in government insurance programs.
A compliance case study

A physician, whose coding practices were historically suspect, attended a presentation at a conference by a health care attorney. The attorney recommended that all attendees develop and implement a billing and coding compliance program to demonstrate the practice’s good faith effort to Medicare, Medicaid, and other third-party payers to conduct themselves in compliance with all legal and ethical standards.

The physician told his office manager to write up a compliance plan, using some of the materials provided at the conference as a template. The physician asked the office manager to present a draft of the compliance program to him within a week. The physician looked at the draft, signed off as the compliance officer, and handed it back to the office manager.
Won’t mandatory compliance programs solve ethics problems?

<table>
<thead>
<tr>
<th>Yes, They Are Effective</th>
<th>No, They Are Not Effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is increased awareness.</td>
<td>Voluntary programs are more effective than mandatory programs.</td>
</tr>
<tr>
<td>Individuals are forced to more deeply consider their actions.</td>
<td>There are always ways to circumvent ethics programs.</td>
</tr>
<tr>
<td>Penalties may become more well known, providing disincentive to unethical behavior.</td>
<td>Ethics is a personal decision and commitment that is not easily influenced by education or instruction.</td>
</tr>
<tr>
<td>Preventive elements of programs will dissuade people from attempting unethical actions.</td>
<td></td>
</tr>
</tbody>
</table>

Can compliance programs really produce ethical behavior?

- The real question is, “What is the relationship between ethics and the law?”
- Which came first—ethics or the law?
  - The answer is clear in this case
  - Laws are created as the result of society’s dissatisfaction with some behavior
  - Laws are created to prescribe a penalty when compliance does not occur
Ethics are superior to the law

Ethics/Ethical Principles & Behavior

Illega

Activity

The role of ethics and law

<table>
<thead>
<tr>
<th>Ethics</th>
<th>Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develops and supplies standards for behavior, but can’t enforce compliance.</td>
<td>Can enforce compliance with the standards.</td>
</tr>
<tr>
<td>Ethical standards change informally, generally over long periods of time.</td>
<td>Provides a means for laws to be formally modified.</td>
</tr>
<tr>
<td>Significant disagreements can exist regarding the source/type of ethical standards in use.</td>
<td>Universally recognized as a standard.</td>
</tr>
<tr>
<td>Facilitates the functioning of a society by serving as a framework for laws.</td>
<td>Facilitates the functioning of a society.</td>
</tr>
<tr>
<td>Indirectly promotes societal welfare by encouraging people to conduct themselves in certain ways.</td>
<td>Directly promotes societal welfare by rewarding/punishing behavior through tax laws.</td>
</tr>
<tr>
<td>Encourages individuals to resolve conflicts in a mutually satisfactory manner.</td>
<td>Protects rights of individuals and makes formal decisions in resolving conflicts.</td>
</tr>
</tbody>
</table>
From the Enron code of ethics

- We treat others as we would like to be treated ourselves. We do not tolerate abusive or disrespectful treatment. Ruthlessness, callousness and arrogance don’t belong here.
  - **Integrity.** We work with customers and prospects openly, honestly and sincerely. When we say we will do something, we will do it; when we say we cannot or will not do something, then we won’t do it.
  - **Communication.** We have an obligation to communicate. Here, we take the time to talk with one another . . . and to listen. We believe that information is meant to move and that information moves people.
  - **Excellence.** We are satisfied with nothing less than the very best in everything we do. We will continue to raise the bar for everyone. The great fun here will be for all of us to discover just how good we can really be.

Will the transition to ICD-10 result in more ethical or less ethical coding?

- The ICD-10 code set itself is not ethical or unethical
  - There is a significant opportunity for **unintentional unethical acts**
    - They don’t recognize that their actions are creating ethical challenges for themselves or others
    - They do not take reasonable steps or precautions to prevent adverse outcomes for themselves or others
Will the transition to ICD-10 result in more ethical or less ethical coding?

• Providers
  – Generally, the least equipped to effect a change of this magnitude
  – Things have to change
    • Education must take place
    • Systems need to be revised or overhauled
  – What if they don’t?

A case study

• It was the practice of Dr. Iseu, an ophthalmologist, to code all cases of conjunctivitis with diagnosis code 372.00—Acute conjunctivitis, unspecified. This and 372.10 were the only conjunctivitis codes on his charge ticket.
• When it came time to implement ICD-10, the practice manager used the GEMS files to make the new charge ticket, which resulted in the use of H10.33—Unspecified acute conjunctivitis, bilateral.
A case study

• Evelyn presented to Dr. Iseu’s office with a history of bilateral simple chronic conjunctivitis (H10.423). Today, she has an acute case of serous conjunctivitis in her right eye (H10.231). However, Dr. Iseu checked the charge ticket and marked H10.33.
• Is this an ethical problem? How might it influence Dr. Iseu’s reimbursement?

Will the transition to ICD-10 result in more ethical or less ethical coding?

• Payers
  — They have the obligation to be ready
  — But what if they use ICD-10 to improve their financial position?
  • Is the use of S40.929—Unspecified superficial injury of unspecified upper arm really legitimate?
A case study

Adam Jackson is the Vice President of Claims for American Intercontinental Health Insurance Company. He was meeting with the senior leadership of the organization. Among several major items on the agenda was the need to increase the quarterly dividend that is paid to the shareholders; another was a discussion about the need to prepare for ICD-10. The CEO, Susan Avillar, was very upset as Adam explained the costs associated with the transition. “How do you expect us to spend that much money on claim processing and still make our shareholders happy?” she asked loudly.

A case study

Adam admitted that there were initial costs associated with the transition, but he emphasized that, in the long run, there would be a reduction in claim-processing costs. Because ICD-10 specificity would reduce the amount of manual intervention needed, eventually fewer claim reviewers would be necessary. This did not satisfy Susan because the savings would not come soon enough. Adam realized that this conversation was not going well and his colleagues were beginning to avert their eyes away from him.
A case study

To save face he said, “It’s our expectation that the number of denied claims will increase after ICD-10 is implemented because providers won’t provide sufficient specificity when they submit the claim. We are planning to gradually implement the more stringent claim payment guidelines.”

“Nonsense,” interrupted Susan. “Implement those guidelines immediately in October 2013—we’ll report that plan at the next shareholders’ meeting—that should help our stock valuation.”

Adam tried to explain his plan, but it was quickly clear that the meeting had moved on to the next topic.

Some truths (and opinions) about ethics

1. You can’t teach ethics
   - It’s not like history or grammar
   - It’s about commitment to values

2. Ethics is not necessarily a two way street
   - The best framework for ethical decision making in medical billing and coding
     - The Golden Rule
     - There is no “out” on the Golden Rule
Some truths (and opinions) about ethics

3. Ethics can begin to fail through the erosion of agency
   – We might do things at work that we would never consider in our personal life
   – It’s easier to be unethical when you don’t have a relationship with the other party

4. Sometimes employers create ethical problems without even meaning to...
   – Focusing on short term “success”
   – Not thinking through the consequences

A case study

• Elena was thrilled to become the new manager of the billing office. She was told that her first duty was to ensure that the accounts receivable (A/R) amount due from insurance companies be reduced, but there were no funds available to hire additional staff—it would have to be done with the staff that she had. If they were successful in reducing the A/R, both she and the staff would be eligible for bonuses.

• Elena passed on the news to her staff and emphasized daily how important it was to get the A/R reduced. After three months, she was delighted to see that insurance A/R had been reduced by 15% during her time in the position. She let her staff know the great news.
A case study

• However, during a conversation with the practice administrator, the administrator expressed concern to Elena that, even though A/R was decreased, revenue to the practice was not increasing—in fact, it had declined 0.5%. She told Elena that a corresponding increase in collections should accompany a decrease in accounts receivable. Elena was told to immediately investigate the situation.

• Elena went back to the department and then sat down individually with each member of the team to see how they had accomplished a significant drop in A/R in a brief period of time. She was alarmed when she learned that:

A case study

– The amount paid by insurers was no longer checked against the amount called for by the contract. Those posting payments said that they decided to just assume that the payers were reimbursing the correct amount. In some cases, they were accepting 50% of the contractual amount and writing off the difference.

– When claims were denied as noncovered, they either transferred the balance to “patient due” or wrote it off completely if the insurer said the patient was not responsible.

– When services were bundled by the payer, they simply wrote off the disallowed amount, as indicated by the payer.
How do we make sure ethics happens?

• Establish ethics policies/compliance programs
  — Define the meaning of ethical behavior
  — Provide a detailed guide to acceptable behavior

• To succeed, you must...
  — Find a champion
  — Get buy-in from the board of directors, owners or other responsible parties
  — Identify the issues that matter to those in the practice
  — Make the code/policies widely available

How do we make sure ethics happens?

• Develop specific business department protocols
  — Empower employees to resolve issues
  — Prepare specific guidelines for common situations
    • The OB/GYN practice
    • The Plastic/Reconstructive Surgery practice
    • The Dermatology practice
  — Correcting errors when they do occur
  — Do it in advance
How do we make sure ethics happens?

- Communicate effectively with patients
  - What are the provider’s objectives?
  - Remove the mystery from the process
  - “Overcommunicate” with the patient

An communication example

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<th>Clarifying Insurance Issues</th>
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At Overland OB/GYN, we recognize that working with insurance can sometimes be difficult to understand. In most business transactions there are only two parties—the buyer and the seller. However, in healthcare, there is the buyer (the patient), the seller (Provider/doctor), and the payer (the insurance company). In order for the buyer to receive maximum benefit and the seller to receive payment, the payer’s rules must be followed.

Unfortunately, every payer has different rules and guidelines and even an individual payer can have multiple different plans—each with different requirements and coverage levels. Our billing staff does their best to be familiar with the most common insurance coverage plans, but we sometimes need your help to obtain the correct information.

We always want to be ethical in all our dealings—with both our patients and the insurers. In an effort to be consistently ethical, we take the following steps when billing for your services:

- As soon as we are notified of a patient’s intent to receive services that may have a total charge of greater than $200, we will contact the patient’s insurer(s) to obtain a benefit quote prior to delivering the service.
- Based on that benefit quote, we will determine the patient's financial responsibility (copayments, deductibles, or payment for the amount if benefits do not exist for the services provided). Payment of the amount due must be paid prior to any surgical procedures.
- For delivery services, we require that the patient’s responsibility be paid by the end of the seventh month of pregnancy.
  - We will bill insurers for all services provided. If the insurer makes payment for services that are not consistent with the benefit quote originally received, we will contact the insurer to be certain that the benefit payment is correct. If it is incorrect and the benefit quote was incorrect, we will promptly refund any patient overpayment within 30 days. If the payment is not correct, we will return payment to the insurer.

Overland OB/GYN intends for you to obtain every penny of benefit to which you are entitled, but we have a contractual obligation with insurers to not accept incorrect benefit payments.
Why companies behave unethically

• The organization is not committed to ethical conduct and doesn’t prepare to deal with ethical issues
• The organization has ethics policies and procedures in place, but individuals in the organization are not committed to them
• The organization has ethics policies and procedures in place, but circumstances put extreme pressure on the organization.

When in the middle of an ethical dilemma...

• You have three options
  – Look the other way
  – Refuse to participate
  – Find an acceptable alternative solution
The risk associated with each option

Look the other way

• This should not be a viable option for the ethical coder
  – It’s a direct violation of the AAPC Code of Ethics
  – *Use only legal and ethical principles that reflect the profession’s core values and report activity that is perceived to violate this Code of Ethics to the AAPC Ethics Committee.*
  – It’s also a violation of the AHIMA Standards of Ethical Coding
Refuse to participate

• This is scary...
  – Economic realities don’t make this option particularly attractive
  – Is it really that big a deal?
• However, it is not as bad as looking the other way...
Find an acceptable alternative

- Be willing to lose your job
- Work within the organization to stop unethical acts
- Consult the organization’s ethics officer
- Recognize unethical requests
- Buy time
- Find win-win solutions
- Find a mentor/create a peer support group

Nobody says...

- I wish I had been less honest.
- I should have taken more ethical shortcuts.
- The extra money I received by cheating was really worth it.
- The relationship that I lost during a business conflict over ethics didn’t mean that much.
You need to answer...

• What are your values?
• How meaningful are they to you?
• Are you willing to adhere to them, even when there is temptation to do otherwise?
• We lose the ability to see the value of our values if we abandon them when they are challenged.

You need to answer...

• We lose the ability to see the value of our values if we abandon them when they care challenged.
  – The opportunity to build character is lost
  – Opportunities to develop a reputation of integrity are not only lost, but significant damage is done to our reputation, making rebuilding that reputation more difficult.
For more information on this topic...

Thank you for attending.
If I can be of help, please contact me.

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