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Report on Medicare Compliance Volume 28, Number 19. May 20, 2019
Hospital Takes TPE Complaints to the Top; CMS Makes Changes, Including New PECOS Line

By Nina Youngstrom

Ultimately it was the gratuitous downcoding of MS-DRGs and the claim denials of hyperbaric oxygen (HBO) therapy under Targeted Probe and Educate (TPE) that led Mercy, a health system in Chesterfield, Missouri, to CMS's doorstep. Mercy had to appeal MS-DRGs that were downcoded when the Medicare administrative contractor (MAC) rejected a secondary diagnosis of severe protein-calorie malnutrition as well as HBO therapy claims even though they conformed to the diagnosis on Medicare's national coverage determination. Although Mercy won most of the appeals, its experience represented a lot of what was wrong with TPE, CMS's national medical review strategy, says Mary Bourland, M.D., vice president of medical documentation at Mercy, who took her concerns about TPE to CMS in Baltimore.

For one thing, the person at the MAC who audits the claim isn't the same person on the education call, so he or she isn't steeped in the details, which makes TPE education less meaningful, Bourland says. It's also sometimes upside-down. "Often the physicians [at hospitals or practices] are more qualified than the nurse auditors on the education call and teaching them, and not the other way around," Bourland contends. Even if auditors are persuaded they're wrong, their hands are tied because appeals are the only recourse. There are also more prosaic, but equally important, glitches around the transfer of information to the MAC and mail never reaching the right hands.

The good news is that TPE is slowly improving, according to Bourland and attorney Chris Kenny, with King & Spalding in Washington, D.C. "The agency is willing to make meaningful changes where it feels it can," he says. For example, providers can now enter a contact person for TPE correspondence in a line that CMS added to the Provider Enrollment, Chain and Ownership System (PECOS), Bourland says. The quality of the education calls has improved, and CMS plans to revise the error rate when providers win appeals, they say. "Going forward, we can expect a different process," she says.

But hospitals still report problems with TPE, and Mercy's experience with malnutrition was particularly frustrating, Bourland says. The MAC nurse reviewer had downcoded MS-DRGs with a major complication and comorbidity (MCC) of unspecified severe protein calorie malnutrition (E43) because the documentation didn't include nutritional edema.

Coding Clinic Backed Up Hospital

That denial was flat-out wrong, Bourland says, and Mercy was determined to prove it. Mercy asked *Coding Clinic*, the authoritative coding newsletter published by the American Hospital Association, whether "code E43, Unspecified severe protein-calorie malnutrition, may ONLY be assigned when edema is documented because 'starvation edema' is printed under code E43 in the ICD-10-CM Tabular," according to a letter the hospital sent to *Coding Clinic*. "Based on Official Coding Guidelines for 'Inclusion Terms,' our interpretation is that edema is NOT a clinical or documentation requirement prior to assigning code E43 for patients who have severe protein-calorie malnutrition clinically diagnosed and documented."

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In response, AHA wrote that when hospitals diagnose and document unspecified severe protein-calorie malnutrition, they don't have to include "edema" to assign E43. "Therefore, based on the example provided, if the provider documents 'starvation edema,' code E43 is the correct code assignment as confirmed by the inclusion term. However, as stated above, 'edema' does not need to be documented in order [to] assign code E43 as long as severe-protein calorie malnutrition is documented," AHA explained.

That means the MAC made a mistake when it downcoded the MS-DRGs, Bourland says. "The TPE medical director misinterpreted the coding guidance on severe protein-calorie malnutrition, so they partially denied more than 90% at all hospitals," Bourland says. But Mercy wasn't satisfied that it had proven its case. Why should it have to spend so much time and money on appeals to rectify an obvious TPE mistake?

Mercy turned to outside attorneys, and together they asked CMS to step in, heading to its headquarters in Baltimore to meet with Connie Leonard, deputy director of the division of medical review and education. "She was willing to hear what we had to say and was candid about where the agency could make improvements and where it was more difficult," Kenny says. He met with CMS program-integrity officials in 2018 and early 2019 on behalf of Mercy.

After the meetings, the MAC rescinded the malnutrition downcoding, HBO therapy and other TPE claim denials. "I don't know what they did. But all of a sudden we were passing TPEs," Bourland says. "Recently we had an HBO review with education and it was like night and day. It was professional."

It was essential to convey the key problems with TPE, Kenny says. For example, it's a huge burden for providers to appeal TPE denials even when they've demonstrated medical necessity or coding accuracy or supplied supporting documentation. Also, when providers prevail on appeal, the victories don't factor into future audits. "Auditors should have the ability to amend the error rate during the TPE [education]," Kenny says. At a May 7 National Provider Compliance Conference in Denver, Leonard indicated this would get done ("Providers That Fail Three TPE Audits May Get a Fourth; CMS 'Pauses' QIO Short-Stay Reviews," *RMC* 28, no. 18). "I think this is a hugely positive development."

Kenny is heartened that CMS is willing to make reforms. "We said at the outset we agreed with the goals of TPE. I don't think [TPE] needs wholesale revamping," Kenny says.

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