Healthcare Law Blog
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Observation Services at Risk Once More

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Just as you hospitals have their clinicians understanding that they need to specifically order observation services, the MACs and RACs have a new way to deny observation claims. At a recent speech, the Medical Director of the Medicare Administrative Contractor Cahaba (which processes claims for many of the for-profit systems out of Nashville), said that observation orders stating "admit" instead of "referred" to observation would be invalid. The medical director reasoned that there was no such category as an observation patient so therefore a patient cannot be "admitted" to observation.

However, the confusion regarding the wording seems to come directly from CMS. From January 2006 until January 2010, CMS Claims Processing Manual Chapter 4, §290.3.3 stated repeatedly that providers could make a "direct admission to observation." In January of 2010, the section was repealed and in newly adopted adjacent manual provisions CMS started using the phrase "referred to observation."

Regardless of what language is used, it should have no effect on the medical necessity of the observation services, unless of course, the MAC or RAC is splitting hairs in order to deny claims. Indeed, one physician commented that "referred to observation" makes even less sense than "admitted to observation."

Providers should take the following actions:

(1) Educate clinicians to drop the words "admit" from their observation orders. Also consider that mandating use of the term "referred" could weaken arguments that other claims still using the word "admit" are problematic. Using "referred" is not required in the CMS Manual provisions and you could just recommend not mandate that clinicians use it instead of "admit."

(2) Appeal all claims related to the wording citing the fact that the words "referral" are more confusing than "admit" and there is no impact on the medical necessity of the services.

(3) Ask your state hospital association and the AHA to intervene in this egregious example of focusing on overpayment recoveries instead of patient care.

For more information, please contact Karie Rego at krego@sheppardmullin.com or (415) 774-3187.