



# Member Alert

April 2009

## Please Welcome the Newest Members of MCMS

Julius Avorkliyah MD	Jessica Kleiner MD	Cheryl Newman MD
Anita Bublik-Anderson MD	Suneel Koul MD	Miyeon Oh MD
Rachel Goldberg MD	Lars-Goran Larsson MD	Temitope Oyegbile MD
Diddarjit Grewal MD	Kristina Lishawa MD	Jennifer Pryor MD
Jeffrey Gusenoff MD	Nandini Mani MD	Bernard Shore MD
Mathew Jonovich MD	Robert Mayo MD	Catherine Tan MD
Anatole Kleiner MD	Lori Medeiros MD	Eric Weinberg MD

## Mandatory Use of New/Revised WCP Medical Report Forms on April 1

All doctors must use the new C-4 family of forms for any and all treatment provided on and after April 1, 2009. The NYS Workmens' Compensation Board **will not enforce payment** for any examinations, services and/or treatments provided that are not reported and billed using the correct new C-4 form for services provided on and after April 1, 2009. In addition, the Board will investigate why the doctor is not using the correct new form and, if warranted, **issue an administrative warning or commence temporary suspension or revocation proceedings**. Please note the following exceptions:

- Ophthalmologists are to continue using Form C-5 (7-07)
- Psychologists are to continue using Form PS-4 (7-07)
- Self-employed occupational or physical therapists are to continue using Form OT/PT-4 (7-07)

## AMA-Professional Courtesy in the Context of Health Care Fraud and Abuse

### Ethical Opinion 6.13 - Professional courtesy.

Professional courtesy refers to the provision of medical care to physician colleagues or their families free of charge or at a reduced rate. While professional courtesy is a long-standing tradition in the medical profession, it is not an ethical requirement. Physicians should use their own judgment in deciding whether to waive or reduce their fees when treating fellow physicians or their families. Physicians should be aware that accepting insurance payments while waiving patient copayments may violate Opinion 6.12.

### Ethical Opinion 6.12 - Forgiveness or waiver of insurance copayments.

Under the terms of many health insurance policies or programs, patients are made more conscious of the cost of their medical care through copayments. By imposing copayments for office visits and other medical services, insurers hope to discourage unnecessary health care. In some cases, financial hardship may deter patients from seeking necessary care if they would be responsible for a copayment for the care. Physicians commonly forgive or waive copayments to facilitate patient access to needed medical care. When a copayment is a barrier to needed care because of financial hardship, physicians should forgive or waive the copayment.

A number of clinics have advertised their willingness to provide detailed medical evaluations and accept the insurer's payment but waive the copayment for all patients. Cases have been reported in which some of these clinics have conducted excessive and unnecessary medical testing while certifying to insurers that the testing is medically necessary. Such fraudulent activity exacerbates the high cost of health care, is unethical, and violates Current Opinion 2.19. (Physicians should not provide, prescribe, or seek compensation for services that they know are unnecessary.)

Physicians should be aware that forgiveness or waiver of copayments may violate the policies of some insurers, both public and private; other insurers may permit forgiveness or waiver if they are aware of the reasons for the forgiveness or waiver. Routine forgiveness or waiver of copayments may constitute fraud under state and federal law. Physicians should ensure that their policies on copayments are consistent with applicable law and with the requirements of their agreements with insurers.

## Clarifying the right to provide professional courtesy

The routine waiver of copayment has been construed as a fraudulent misrepresentation of physician charges against payers of all types. While the routine waiver of copayment should not be confused with the occasional grant of professional courtesy, physicians must be aware that laws designed to prevent fraud might have an effect on legitimate, even honorable, conduct. For example, physicians have often characterized professional courtesy as accepting whatever the insurance plan allows as payment in full. However, where the patient is a Medicare beneficiary, such an action would run afoul of the Medicare program.

Under traditional Medicare, physicians are paid 80 percent of the allowable amount: the lower of the payment schedule amount or the actual charge. In an instance where Medicare allows \$100, the program pays \$80 and the copayment amount is \$20. A determination to only accept "what insurance pays" as payment in full could be seen as the physician having an actual charge of \$80, and the resulting insurance payment should be \$64.

Even extending professional courtesy through the promise of free care could be viewed as a violation of the federal anti-kickback law if there is a link between the care provided and subsequent referral of patients who are Medicare or Medicaid beneficiaries. Under this law, an illegal kickback occurs where there is a referral for a Medicare or Medicaid covered service as a result of the receipt of remuneration that influences the ordering or receipt of services from a particular practitioner or entity. One of the Health Insurance Portability and Accountability Act (HIPAA) amendments to the anti-kickback law expanded the definition of "remuneration" to include "waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value." While the law allows exceptions for financial need, it is unlikely that financial need would be applicable in many cases of professional courtesy.

Physicians should exercise caution in extending professional courtesy where the patient may be in a position to make referrals. If the physician's intent behind extending professional courtesy is to generate referrals for Medicare or Medicaid covered services, the government will be in a position to prosecute a fraud or abuse case for a violation of the anti-kickback law.

Extensive research has failed to uncover any instance where a physician has been prosecuted by either the OIG or the DOJ for fraud or abuse based on the extension of professional courtesy. Furthermore, the OIG is unlikely to initiate a fraud or abuse investigation related to the traditional act of professional courtesy. On the other hand, prosecutions for the routine waiver of Medicare coinsurance have involved schemes to provide medically unnecessary services, and were not examples of professional courtesy.

## Upcoming MCMS Programs/Events

Apr 1	Ask the Carrier	Convention Center
Apr 14	Advanced Coding	MCMS
May 5	E&M Coding for Physicians and Chart Auditing	MCMS
May 5-6	Financial Management Boot Camp	MCMS
May 13	MCMS Annual Meeting	RAM
June 3	Technology Day	RIT Inn
June 10	Strategic Planning for Medical Practices	MCMS
June 25	Front Desk with Finesse	MCMS
Sept-Oct	Certified Medical Coder	MCMS
Oct 9	Office Manager Appreciation Luncheon	Casa Larga
Oct 16	Principles of Coding	MCMS
Dec 3	Reimbursement Strategies	MCMS
Dec TBA	Front Desk with Finesse	MCMS