Navigating the Continuum of Ethical Billing

Tony Peregrin

CLINICAL NUTRITION SERVICES improve conditions such as diabetes, heart disease, and hypertension and support value-based care, focusing on optimizing cost, quality, and the patient's care experience. Many registered dietitian nutritionists (RDNs) work to treat and prevent disease by providing medical nutrition therapy (MNT), which is covered by the Medicare Part B program, numerous commercial insurance plans, and many state Medicaid programs. Notably, the US health care system continues to witness changes related to payment for medical and nutrition services. As a result, RDNs should be as mindful as possible about ethical billing practices to sustain the reputation of both the individual practitioner and the profession as a whole.[1]

It is estimated that fraudulent billing represents 3% to 10% of health care spending in the United States, contributing to high health care costs, inefficiency, and even diminished quality of care.[2,3] With this in mind, it is essential to note that many health care providers, including RDNs, likely work diligently to submit accurate and ethical billing claims, bolstering the trust between the provider and patient, which is a foundational component of this relationship.

https://doi.org/10.1016/j.jand.2021.08.103

The Continuing Professional Education (CPE) quiz for this article is available for free to Academy members through the MyCDRGo app (available for iOS and Android devices) and through www.jandonline.org (click on "CPE" in the menu and then "Academy Journal CPE Articles"). Log in with your Academy of Nutrition and Dietetics or Commission on Dietetic Registration username and password, click "Journal Article Quiz" on the next page, then click the "Additional Journal CPE quizzes" button to view a list of available quizzes. Non-members may take CPE quizzes by sending a request to journal@eatright.org. There is a $45 fee per quiz (includes quiz and copy of article) for non-members. CPE quizzes are valid for 3 years after the issue date in which the articles are published.

CODE OF ETHICS

The Academy of Nutrition and Dietetics (the Academy) and the Commission on Dietetic Registration (CDR) provide definitive and unequivocal guidance on the matter of ethical billing. The Code of Ethics for the Nutrition and Dietetics Profession states that nutrition and dietetics practitioners should "document, code, and bill to most accurately reflect the character and extent of delivered services" (2g).[4,5] The Academy and its credentialing agency, the CDR, suggest that it is "in the best interest of the profession and the public it serves to have a Code of Ethics in place that guides nutrition and dietetics practitioners in their professional practice and conduct."[5]

"The principles and standards related to ethical practices regarding billing fall under Principle 2—Integrity in personal and organizational behaviors and practices," said Eileen Stellefson Myers, MPH, RDN, LDN, CEDRD, FADA, FAND, chair of a recent Academy Coding Survey Workgroup. "Along with Standard 2g, 2b, states we [all Academy members and CDR credentialed practitioners] will 'comply with all applicable laws and regulations,' and 2e, that we 'provide accurate and truthful information in all communications' also apply to ethical billing practices."

"Your revenue, your business, and your reputation are all on the line if you are not complying with ethical billing practices," said Marsha Schofield, MS, RD, LD, FAND, senior director of the Academy's Governance and Nutrition Services Coverage. "I think the public and all stakeholders tend to generalize. So, when they see one person practicing in a certain way, there is a natural tendency to generalize that across all dietitians and the entire profession. For decades, we have been working to position registered dietitian nutritionists as nutrition experts. Anything that challenges that expertise can have a ripple effect in terms of what we want as a profession—respect, recognition, and being compensated fairly. We are in a climate where there is much competition out there. There are many individuals, organizations, and other professions that are positioning themselves in the nutrition arena, and we want to be positioned front and center as the experts in that area. So, anything that questions our credibility has the potential to impact that negatively."

BILLABLE NUTRITION SERVICES

All of the following are examples of billable nutrition services, based on site of service, statutory and regulatory policies, and individual payer policies and patient benefits: "nutrition screening/risk assessment, education and counseling, medical nutrition therapy, and more specialized services such as diabetes self-management training; supervision of oral, enteral, and parenteral feeding regimens; continuous glucose monitoring, and other services that often necessitate advanced training and/or additional certification."[1] When it comes to accurately billing for these and other services, RDNs should be aware of 2 code sets as outlined on the Academy's Diagnosis and Procedure Codes webpage[6]:

> *Diagnosis codes, such as the ICD-10-CM (officially called the International Classification of Diseases, 10th Revision, Clinical Modification), describe an individual's disease or medical condition. Physicians determine the patient's diagnosis and document this in the medical record, while trained billers assign the diagnosis code numbers to the physician-documented diagnosis for use on claims forms.*[6]

CPT codes®, *or the Current Procedural Terminology codes, are five-digit procedure codes that describe the service rendered by the healthcare professional. The MNT codes 97802, 97803, and 97804 are CPT® codes that RDNs use on claims to report nutrition services provided by the RDN. (In addition to the MNT codes, there are other codes that RDNs may use).*[6]

Looking at possible nutrition services that may be billable, there are potentially more services RDNs can bill for depending on several factors, such as the site of service and payor contracts, among others.

"The Academy's website shows codes within a dietitian's scope of practice," said Myers. "But we may also have to consider if the state allows us to provide certain services. Does the payer allow it? For instance, right now, the telephone assessment and management services may be provided by a qualified nonphysician, and Medicare now covers that under the definition of a public health emergency, which are CPT codes 98966 to 98968. CPT codes 98970 to 98972, which is the qualified nonphysician health care professional online digital assessment and management service for an established patient, were recently approved and may also be approved by some payers."

Within the context of ethical billing practices, it is essential that RDNs are not simply aware of procedure code numerals but that they read and understand the code descriptions and the precise details of each code. Becoming familiar with each billing code informs the nutrition and dietetics practitioner *who* can bill and *how* to bill for these services.

"A mantra in the world of ethical coding when it comes to the CPT codes is you should select the CPT code that best describes the service that is provided," added Schofield. "Sometimes what we hear in questions and via chatter on listservs is, 'What code is going to get me paid the most?' That is not the question that should be asked because it does not comply with ethical billing practices. The code that should be selected must be the one that best describes the services provided."

As for ICD-10-CM codes, it is essential to remember that these are diagnoses officially assigned by a medical professional such as a physician or nurse practitioner (the latter based on the state-specific scope of practice laws). "Say a patient comes to me and tells me 'I want to see you because I have diabetes or heart disease,'" said Schofield. "It would be unethical for me to select an ICD-10 code to put on a claim form based on the patient informing me what their medical diagnoses are. There could be other factors at play in this situation. The patient may lack understanding of their diagnosis. Perhaps there are other diagnoses for this patient that could influence the nutrition assessments and the care plan."

Bypassing legal scope of practice, assignment of medical diagnosis codes could unintentionally introduce a new diagnosis into a patient's medical record. The insurance company can create a scenario where it could become a pre-existing condition with implications for coverage in the future.

SETTING FEES AND OFFERING DISCOUNTS

A key component of complying with sound coding business standards involves setting up transparent and equitable fee schedules. "Specifically, this means that we do not discount when we cannot discount, and we do not waive fees when we cannot waive fees," explained Myers. "For Medicare, we file and have patients sign Advanced Beneficiary Notices when Medicare is not covering a service." These are all elements that are important in terms of ethical billing practices.

"You have to create fees in which the same fee applies no matter who your client is," added Schofield. "You can have financial policies that allow for discounts for hardship exceptions. However, the ethical piece related to that is that you have to apply policies consistently. You cannot play favorites." Before applying discounts for services, RDNs should develop objectively written policies that comply with state and federal regulations. Discounts could include sliding scale discounts and cash-paying discounts, but there are caveats to this.[7]

It is important to note that RDNs cannot offer a discount to Medicare or Medicaid patients for covered services. Suppose there is a written policy addressing cash payment, and the policy applies to all patients. In that case, a discount may be offered to Medicare or Medicaid beneficiaries for services not covered.[7] If a discount is offered to induce the patient to receive other services payable by Medicare, Medicaid, or other government programs, the discount may violate federal fraud and abuse laws.[7]

TIME-BASED CODES

Many of the CPT codes that RDNs use for billing purposes are based on billing in multiple units. The total minutes of face-to-face time spent per encounter dictate how many units of a time-based code a qualified provider may bill. "The design of the coding structure *already* factors in the time you spent before your face-to-face encounter with the patient, including time spent reviewing records and speaking with other providers," explained Schofield. "All of those activities are built into the payment, so you should not pick the number of units you are billing based on that work before you see the patient or on the work that you did afterward. Billing time is limited to the face-to-face time with the patient.

"The Centers for Medicare & Medicaid Services (CMS) uses the '8-Minute Rule' as an algorithm for billing time-based current procedure terminology (CPT) codes valued in 15-minute increments, such as CPT codes 97802-3 for medical nutrition therapy services. In order to bill 1 unit of a CPT code valued in 15-minute increments, the service must be performed for at least 8 minutes."[8]

ETHICAL BILLING: BEYOND THE CLAIM FORM

Several individuals may be involved in the ethical billing process, starting with actions performed before the service is rendered and continuing long after.[1] In other words, ethical billing does not simply involve the single act of submitting a claim form.

For example, before providing nutrition services such as MNT, RDNs should consider whether a referral from a physician or other health care provider is appropriate. According to the Academy, "A variety of factors impact referrals, including payer policies that

may be providing direct reimbursement to the RDN, the extent to which state licensure laws may define the need for a referral, facility policies such as those addressing quality clinical care and continuity, and the type of service being provided by the RDN."[9]

"Ethical billing starts before the visit, with the RDN developing an understanding of contracts, obtaining a referral if required, and providing the patient with visit policies such as estimated number of visits suggested and the fees, and knowledge of payer payment, and co-pay," explained Myers. "If the services are not covered by Medicare, an Advance Beneficiary Notice of Noncoverage (ABN) must be signed."

The RDN should also document time spent with the patient and relevant elements of the nutrition care process. Claims should then be filed promptly, and the RDN should follow up with the payor or billing department to ensure appropriate reimbursement, if necessary. If the claim is denied, the RDN should determine why, and if appropriate, refile. When performed under sound business practices, licensure laws, payers' coverage guidelines, and the Academy/CDR's Code of Ethics, each of these steps qualify as ethical billing practices.

"There are so many ethical practices that underpin that final piece of putting data into a claim form," added Schofield. "You should keep in mind that you need to be credentialed with payers before you submit a claim form and that you appropriately and ethically use the National Provider Identifier (NPI) number on the claim form."

"Before enrolling in Medicare or with any payer, you must have an NPI number in order to bill. An RDN needs to know that their NPI is their identifier when billing and that this one number is traceable throughout their career," said Myers. "NPIs are used to demonstrate a viable workforce to external stakeholders. For billing providers, not billing means you are not counted and recognized as a contributor to care. Also, when evaluating patient outcomes or determining cost/benefit, the NPI of the RDN is included as a contributor to the outcome. When an RDN's NPI is identified with improved outcomes and cost-benefit, we increase our chances for expanded service coverage as well as potentially additional health care payments."

CONSEQUENCES OF UNETHICAL BILLING

It is important to note that fraudulent billing practices are not only unethical, they are also illegal. Violations of statutes and policies that govern reimbursement for MNT services from Medicare, as well as infractions of contractual agreements set forth by third-party payers, may expose RDNs to potential criminal, civil, and administrative liability. These violations can result in fines, penalties, and other consequences.

"There are 3 general types of consequences: legal, economic, and professional," said Schofield. "They all relate in some way to potentially tarnishing the individual RDNs and/or the industry's reputation." Additional repercussions of fraudulent billing include a spectrum of realities that include, but are not limited to, the following: temporary or permanent loss of licensure, job loss, temporary or permanent loss of provider status, and claims denial and rejection.

It should be pointed out that claiming ignorance of approved billing and reimbursement practices will not be an excuse for failing to comply with these policies.

"We need to be educated, through the resources provided by the Academy, about what constitutes acceptable, ethical billing practices," said Myers. "It is not acceptable to say we did not know. As a credentialed provider and health care professional, it is our obligation to adhere to CMS and provider contracts."

There may be occasions when an RDN is the subject of an audit, either due to a claims processing system-related error or payer-identified "flags" for monitoring. "Any audit is stressful, but if you do your due diligence upfront and follow procedures correctly and ethically, the likelihood of repayment should be very small," Schofield said.

CONCLUSION

Billing fraud can inflate health care system costs, produce inefficiencies, and pose risks to patient and client safety. Unethical billing practices can also damage the individual practitioner's reputation and the overall reputation of the dietetics profession and can lead to diminished revenue, fines, and suspension of license or other specialized credentials.

Best practices for ensuring accurate claims and avoiding unethical billing practices include the following:

- Stay informed of health care laws, including state laws,
- Keep current with medical billing and coding trends, which are constantly changing due to modifications in health care regulations, including updates to ICD-10-CM and CPT codes.
- Make sure insurance has been verified,
- Collect and maintain up-to-date documentation,
- File claims within designated deadlines,
- Verify claims data have been entered correctly including billing codes and patient, provider, and insurance information.
- Follow the Academy's/CDR Code of Ethics and other workplace/organization mandates that are committed to ensuring the integrity of the coding process.
- Seek professional and/or legal assistance when billing-related uncertainties arise.[1]

References

1. Hodorwicz M, White JV. Elements of ethical billing for nutrition professionals. Academy of Nutrition and Dietetics. *J Acad Nutr Diet*. 2012;112(3):432-435.
2. Drabiak K, Wolfson J. What should health care organizations do to reduce billing fraud and abuse. American Medical Association. *AMA Journal of Ethics*. Accessed July 15, 2021, https://journalofethics.ama-assn.org/article/what-should-health-care-organizations-do-reduce-billing-fraud-and-abuse/2020-03https://journalofethics.ama-assn.org/article/what-should-health-care-organizations-do-reduce-billing-fraud-and-abuse/2020-03.
3. Morris L. Combating fraud in health care: An essential component of any cost-containment strategy. *Health Aff (Millwood)*. 2009;28(5):1351-1356.
4. Academy of Nutrition and Dietetics/Commission on Dietetic Registration. Code of ethics for the Nutrition and Dietetics Profession. Published June 1, 2018. Accessed July 1, 2021, https://www.eatrightpro.org/-/media/eatrightpro-files/career/code-of-ethics/coeforthenutritionanddieteticsprofession.pdf?la=en&hash=0C9D1622C51782F12A0D6004A28CDAC0CE99A032.

5. Code of Ethics for the Nutrition and Dietetics Profession. Academy of Nutrition and Dietetics/Commission on Dietetic Registration. Accessed July 1, 2021, https://www.eatrightpro.org/-/media/eatrightpro-files/career/code-of-ethics/codeofethicshandout.pdf.
6. Academy of Nutrition and Dietetics. Diagnosis and Procedure Codes. Accessed July 15, 2021, https://www.eatrightpro.org/payment/coding-and-billing/diagnosis-and-procedure-codes.
7. Academy of Nutrition and Dietetics. Setting fees. Accessed July 15, 2021, https://www.eatrightpro.org/payment/business-practice-management/services-fees-and-management-resources/setting-fees.
8. Academy of Nutrition and Dietetics. Time-based codes and the 8-minute rule. Accessed July 15, 2021, https://www.eatrightpro.org/payment/medicare/providing-service-and-billing/time-based-codes-and-the-8-minute-rule.
9. Academy of Nutrition and Dietetics. Referral requirements for coverage for nutrition services. Accessed July 15, 2021, https://www.eatrightpro.org/payment/coding-and-billing/referral-requirements-for-coverage-for-nutrition-services.