



Treating Family Members

These Q & A's recently appeared on Codingline.

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Welcome to Codingline Particulars, a regular feature in Podiatry Management focusing on foot and ankle coding, billing, and practice management issues.

Treating Family Members

Query: I have a question with respect to receiving payment for services performed on a “family member.” CMS notes that “payment may not be made under Part A or Part B for expenses which constitute charges by immediate relatives of the beneficiary or by members of his/her household”, but what about other payers? What is considered appropriate and payable in terms of family members?

Response: Respondents were pretty much on the same page when it came to treating family members with some citing various portions of the Centers for Medicare & Medicaid Services guidelines on the subject. For example, the following is from CMS’s “Medicare Learning Network” publication, *Items and Services Not Covered Under Medicare*:

“Payment for items and services furnished by the beneficiary’s immediate relatives and members of the beneficiary’s household will not be made since these items and services are ordinarily furnished gratuitously because of the relationship between the beneficiary and the provider or supplier.

A beneficiary’s immediate relatives include the following degrees of relationship:

- Husband or wife
- Natural or adoptive parent, child, or sibling
- Step-parent, stepchild, step-brother, or stepsister
- Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law
- Grandparent or grandchild
- Spouse of grandparent or grandchild

If the marriage upon which a step-or in-law relationship is based

- Charges for services furnished by a physician or supplier with a prohibited relationship to the beneficiary submitted by an unrelated individual, partnership, or professional corporation
- Those services furnished “incident to” a physician’s professional service when the ordering or supervising physician has a prohibited relationship to the beneficiary

A professional corporation is:

- Completely owned by one or

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becomes terminated through divorce or death, the prohibited relationship will continue to exist.

Members of the beneficiary’s household include the following who share a common abode with him or her as part of a single-family unit:

- Individuals who are related by blood, marriage, or adoption
- Domestic employees
- Other individuals who live together as part of a single family unit (does not include roomers or boarders)

Payment will also not be made for these items and services:

more physicians or is owned by other health care professionals as authorized by State law

- Operated for the purpose of conducting the practice of medicine, osteopathy, dentistry, podiatry, optometry, or chiropractic

Any physician or group of physicians that is incorporated constitutes a professional corporation. Items and services furnished by non-physician suppliers that have a prohibited relationship with the beneficiary and are not incorporated will not be paid, regardless of whether the supplier is

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owned by a sole proprietor who is related to the beneficiary or owned by a partnership in which one of the partners is related to the beneficiary. This payment restriction does not apply to a corporation (other than a professional corporation), regardless of the beneficiary's relationship to any of the stockholders, officers, or directors of the corporation or to the individual who furnished the service."

So, for those readers who thought there might only be prohibitions on payments (in the above case, Medicare payments) when services or items are provided to immediate family members, surprise! You can't bill Medicare for professional services given to your chauffeur...you know, the one living over your garage or in the chauffeur's quarters of your house.

What about non-Medicare payers? I imagine they have similar guidelines. You would either need to review your patient's health plan, or contact the payer in question regarding the plan's policies.

From an "ethical" standpoint, Paul Kim, JD, MPH, poses the question: Is the provider truly able to exercise independent clinical judgment that is in the best interest of the patient, given the [family] relationship? Paul Kesselman, DPM responds that he maintains a strict policy of not treating close relatives, adding it may be difficult to maintain the same strict doctor-patient relationship due an emotional involvement or close relationship involvement with the patient. He goes on to say that your relatives may not wish to share what may be for you important medical information because you are "family"—e.g., taking birth control pills or psychiatric meds; previous sensitive diagnoses or surgical procedures; history of addiction or alcoholism, etc.—leaving you without possible relevant information that could one day come back to haunt you.

Then there is the possibility that the treatment (or surgery) you render doesn't quite end up exactly right, either by your standards or your relative's expectations. Imagine how awkward it would be if things go wrong... They know where you live (and your

cell phone number), and have all your other relatives on speed-dial.

With the last word, Mike King, DPM notes that there have been some cases when payers find out that claims are being submitted for relatives, and they begin to investigate to see if billed services or items were never rendered or dispensed. While these may be very few, at least some push in the payer policies on treating relatives stems from such cases.

tive that limits or voids the legitimate unbundling of the two listed codes.

One example is the questioning and denial of the "-59" (or "X") modifier when paring of a corn is performed on the same toe as the debridement of a nail. Another example is the payment of a single closed treatment of metatarsal fracture on the same foot, regardless if multiple closed treatments of metatarsal fractures exist. Also, keep in mind that

Non-Medicare payers have their own bundling edits that may or may not resemble Medicare's.

Billing CPT 28308 with CPT 28270

Query: *I dictated that there was a joint contracture at the metatarsal-phalangeal joint as well as a deformed metatarsal outside the normal metatarsal parabola. Can I bill CPT 28270 (capsulotomy; metatarsophalangeal joint, with or without tenorrhaphy, each joint [separate procedure]) with CPT 28308 (osteotomy, with or without lengthening, shortening, or angular correction, metatarsal; other than first metatarsal, each)? I can find no CCI edits that say I can't.*

Response: Can you bill separately for CPT 28270 when performing a distal metatarsal osteotomy on the same ray? Sure. Is it true there is no Correct Coding Initiative (CCI) edit bundling the two? Yes, there is no edit, however...

#1—Just because there is no CCI edit doesn't mean that it is permissible or reimbursable. The CCI edits, when listed, bundle component codes in comprehensive codes. Specifically, the edits note whether or not a modifier (e.g., "-59"; "-25"; one of the mysterious "X" modifiers) applied to the component code will label that code as distinct, and, therefore, potentially separately payable with the comprehensive code. Many providers have recently found that Medicare, who applies the CCI edits, ignores their own CCI edits by unilaterally developing guidelines to the Correct Coding Initia-

non-Medicare payers have their own bundling edits that may or may not resemble Medicare's.

#2—If performance of a metatarsal-phalangeal joint capsulotomy/tenorrhaphy is needed to successfully perform a procedure like a distal metatarsal osteotomy or plantar plate repair or MTPJ fixation or distal metatarsal (or proximal base) osteotomy, then the primary procedure—bone work—would be billable, and the related soft tissue release(s) included.

#3—While your reasoning for billing both procedures might include "there are different pathologies at work here", if they are related (e.g., distal plantarflexed metatarsal and MTPJ joint contracture) and you perform procedures to resolve related pathologies in the same general site, payers may question all procedures you may want to bill. When performing multiple procedures, they should be distinct or independent from one other (and documented as such). The "-59" modifier description notes that "documentation must support a different session, different procedure or surgery, different site or organ system, separate incision or excision, separate lesion, or separate injury (or area of injury in extensive injuries) *not ordinarily encountered or performed on the same day by the same individual.*" Be very clear in your operative report.

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#4—If you perform a metatarsal neck area osteotomy at the same (relatively close, exposed) surgical site and also release the capsulotomy (whether to gain exposure for the osteotomy or to release the joint), the two procedures may be bundled together by payers. CPT 28270 is

Your documentation will be critical to support the “distinct” requirement for payment.

designated a “separate procedure” by CPT. A “separate procedure” by definition is “commonly carried out as an integral component of a total service or procedure” and not separately billed.

Having said all the above, CPT guidelines also note that if the procedure [e.g., capsulotomy] is “carried out independently or considered to be unrelated or distinct from other procedures/services provided at that time, it may be reported by itself, or in addition to other proce-

dures/services by appending modifier -59 to the specific “separate procedure” code to indicate that the procedure is not considered to be a component of another procedure, but is a distinct, independent procedure.”

Again, your documentation will be critical to support the “distinct” requirement for payment. The question is: is a metatarsal-phalangeal joint capsulotomy not only performed to relax or reduce a joint contracture, but also to gain exposure for a distal metatarsal osteotomy? The answer might be the difference from getting paid for either procedure, or just the osteotomy.

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Dr. Goldsmith of Cerritos, CA is editor of Codingline.com and recipient of the Podiatry Management Lifetime Achievement Award.