

IMS Advocate

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HIPAA and student records

The Office of Civil Rights (OCR), the agency with jurisdiction over HIPAA, joined with the U.S. Department of Education to issue guidance on the release of protected health information from student health records consistent both with HIPAA and FERPA (Family Educational Rights and Privacy Act). Search www.hhs.gov/ocr/hipaa to obtain the joint document and frequently asked questions (FAQs).

Treating LEP patients

Iowa physicians are increasingly facing situations where their patients have limited English proficiency (LEP). Issues naturally arise in these situations including the physician's duty to provide an interpreter, how to ensure meaningful informed consent, and when family and friends may serve as a patient's interpreters. IMS is completing work on a short primer, which will include some background on the issue and important considerations for practices. This resource will be available next week on the IMS Web site, www.iowamedical.org.

Braley appointed to key post

Rep. Bruce Braley of Iowa's 1st Congressional District has been appointed to the House Energy and Commerce Committee. This will give Braley, a Democrat, an important voice in upcoming federal discussions, including reauthorization of the State Children's Health Insurance Program (SCHIP).

New report outlines CMS response to PQRI issues

CMS has released a new report entitled, *Physician Quality Reporting Initiative (PQRI): 2007 Reporting Experience*. The report provides a detailed analysis of the 2007 PQRI reporting experience and outlines some of the challenges and successes of the 2007 program, as well as some of the business reasons that may explain why these challenges occurred. Specifically, the report describes several issues identified for 2007 and CMS' plans for modifications to the analytics for the 2008 PQRI. In addition, CMS will apply these modifications to the 2007 PQRI data and re-run the data. CMS expects that additional eligible professionals will qualify for an incentive payment for both 2007 and 2008 based on these efforts. These activities should be completed by the fall of 2009.

The report is available online on the CMS Web site, www.cms.gov. This report will also be discussed on the PQRI National Provider Call on December 16.

Billing Medicare consultations

In February, Iowa transitioned to WPS Medicare as the state's new Medicare Administrative Contractor (MAC). WPS hosted several educational teleconferences about the billing of consultations. IMS heard concerns from medical practices that WPS had too narrowly interpreted the Centers for Medicare & Medicaid Services (CMS) guidance regarding Medicare consultation services. IMS, too, was concerned that WPS' directives on consults were inconsistent with national Medicare policy as articulated by CMS. IMS asked WPS to alter its stance on consults to be consistent with CMS statements and advised the CMS Region VII Office of its concerns.

In late November, WPS published on its Web site a list of compiled Q&As regarding consults that had been asked earlier in the year; these may help practices determine whether or not to bill a consult. Visit the IMS Web site, www.iowamedical.org, to obtain more information, including a sample form that may be used to clarify whether or not a physician has requested a consult or a transfer of care. IMS concurs with WPS that the use of such a communication tool, which would become part of the patient's medical record, would help to avoid confusion in the event of an audit.

Medicare changes enrollment rules for 2009

The 2009 Medicare Physician Fee Schedule (MPFS) final rule, published in the November 19 *Federal Register*, includes changes that will restrict the timeframe providers will have to make changes and retroactively bill for Medicare services. Beginning January 1, providers will only have 30 days to correct mistakes and supply additional information, which is down from 90 days. Additionally, the 2009 MPFS limits a provider's ability to retroactively bill Medicare to no more than 30 days, instead of 27 months. CMS will also instruct contractors to deny applications that are not completed correctly instead of rejecting them. Denied applications can only be reopened if they are appealed. WPS Medicare will post 2009 enrollment updates on their Web site, www.wpsmedicare.com.



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Dept. of Labor issues new rules for FMLA medical certification

The federal Department of Labor (DOL) issued new rules in November addressing several aspects of the Family and Medical Leave Act (FMLA), including medical certification of a serious health condition (29 CFR 825.305-307). In comments, the DOL acknowledged the frustrations of stakeholders, including physicians, with the medical certification process.

In rule (29 CFR 825.305-.307), the DOL affirmed the right of an employer to require medical certification of a serious health condition and the responsibility of the employee to obtain a “complete” and “sufficient” medical certification or to provide the employer with a HIPAA-valid authorization to permit the employer to obtain the medical certification. The focus of the rule is on medical certification; employers may not require employees requesting leave to authorize release of the employee’s medical records either in lieu of or in addition to medical certification. The medical certification must include “a statement or description of appropriate medical facts” regarding the patient’s (or family member’s) medical condition sufficient to support the need for leave. The certification is “insufficient” if information provided is vague, ambiguous, or unresponsive. The employer may contact the physician *only* for clarification and authentication of information in the medical certification but that contact must come from a health care provider, a human resources professional, a leave administrator, or a management official, *not* the employee’s direct supervisor.

The DOL has developed two new medical certification forms that may be used, WH-380E if leave is for the employee’s serious health condition and WH-380F if leave is for a family member of the employee. Search www.dol.gov for further information.

Internet-based PECOS available in Iowa

On December 1, 2008, CMS announced that Internet-based Provider Enrollment, Chain and Ownership System (PECOS) is available to physicians and non-physician practitioners in Iowa. The Internet-based PECOS will allow providers to enroll, view their enrollment information on file with Medicare, make a change in their enrollment, or check on the status of a Medicare enrollment application. For information about Internet-based PECOS, including the types of changes that must be reported and important information that physicians and non-physician practitioners should know before submitting a Medicare enrollment application via Internet-based PECOS, go to www.cms.hhs.gov/MedicareProviderSupEnroll.

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