The Facts About Billing Errors & Omissions Insurance

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Billing Errors and Omissions (E&O) insurance is nothing new, but the face of it is rapidly changing. Ten years ago, a Billing E&O claim often meant that there had been actual fraud and that someone was going to jail. Today, it is more likely to mean that an honest coding mistake was found and that fines and penalties will be assessed.

Billing E&O insurance provides coverage for 1) the defense of alleged billing errors and 2) the fines and penalties assessed because of these errors. Allegations may be brought by governmental agencies including the Centers for Medicare and Medicaid Services (CMS) and the Department of Health and Human Services, by commercial payers such as Regence and Premera, or by a qui tam plaintiff who files a fraudulent-billing complaint. The fines and penalties can be assessed by either governmental or commercial payers.

The insurance has seen a recent growth in popularity because the government has recently funded efforts to audit providers in a manner that we have never seen before. One such program provides Recovery Audit Contractors (RAC) with incentives in the range of 9 to 12.5% for the overbillings found. With such lucrative contracts on the line, these auditing agencies are resorting to automated reviews of files and complex reviews that make it difficult for providers to know when they may be remotely audited.

Additional Facts You Should Know

1. Each year, there is an estimated $55 billion in overpayments improperly billed to government programs.

2. Health Data Insights (HDI) is the RAC contractor for our region. Their Web site features important information to assist you in understanding RAC audits. (See http://racinfo.healthdatainsights.com.)

3. The top categories for errors found include medically unnecessary, incorrectly coded, and no or insufficient documentation.

4. The average cost of defending oneself against a regulatory proceeding is $80,000. Fines and penalties can reach hundreds of thousands of dollars.

5. Both groups and solo physicians are seeing audits.

Case Scenario 1. A federal program’s routine post-payment review focused on the appropriateness of claims paid by Medicare to specific providers over a particular period. The findings alleged that one of the physicians had been reimbursed for unnecessary pro-
cedures of over $6 million. The doctor retained an attorney to challenge these findings. Two years later, Medicare revised its findings and calculated that only a $60,000 refund was due. Attorney costs: $70,000.

**Case Scenario 2.** Another post-payment review of claims paid by Medicare determined that a physician was overusing certain procedure codes. Medicare calculated that the provider had been overpaid $750,000. When reimbursement was requested, the physician retained an attorney to challenge the allegations. Two years later, Medicare recalculated the amount and reduced it to $635,000. After continued appeals for another two years and an appearance before an administrative law judge, the review findings were dismissed, and Medicare was obligated to reimburse money to the physician. Attorney costs: $125,000.

**What’s Not Covered**

Billing E&O insurance is not included on your professional liability insurance policy. The coverage can, however, be purchased as a separate policy through Physicians Insurance Agency to help defend your practice and get you through what might be a difficult audit. As with any insurance policy, there are exclusions, such as fraudulent, criminal, dishonest, or otherwise intentional acts, as well as claims outside the scope of Billing E&O. Restitution—the actual owed money that needs to be repaid to the government or commercial payer—also is not covered. (However, having an attorney to help defend your case can pay off in the form of substantially reduced restitution.) Because insurance policies can vary, it is important to refer to the actual policy for its description of coverage.

**Expect Change**

As the demand for Billing E&O coverage increases, more insurance companies are likely to show interest in providing policies, making the market more competitive. Expect to see changing premiums and refined policy features that reflect both the growing competition and the insurers’ claims experience. Also, the lawyers who specialize in Billing E&O, through experience, are becoming more adept at handling the incoming claims. This can mean faster, more efficient handling of your claim when and if the time comes.

*Contact Tim at tim@phyins.org or 1-800-962-1399 to learn more about Billing E&O coverage at Physicians Insurance Agency.*