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Final Guidance on "Never Events"

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CMS recently finalized three national coverage determinations (NCDs) which deny coverage for erroneous surgical procedures. In August of last year, **we informed you** of CMS's proposed NCDs for certain "never events" related to surgical errors.

Such "never events" are included on the National Quality Forum's list of "serious Reportable Adverse Events." On January 15, 2009, CMS finalized these NCDs, which pertain to:

1. the wrong surgery performed on a patient;
2. surgery performed on the wrong patient; and
3. surgery performed on the wrong body part.

Not only do these policies implement CMS's long standing policy of denying coverage for services that are unreasonable and unnecessary, CMS's acting administrator, Kerry N. Weems believes these policies, "have the potential to reduce causes of serious illness or deaths to beneficiaries...."

Such a result is in line with CMS's continued initiative of improving safety and the quality of care for hospitalized patients, required by the Deficit Reduction Act (DRA) of 2005. The DRA of 2005 instructed the Secretary of the Department of Health and Human Services to identify acute medical conditions that: (1) are high cost, high volume, or both; (2) are identified through ICD-9-CM coding as complicating conditions or major complicating conditions, when present as secondary diagnoses on claims, and/or in a higher paying MS-DRG; and (3) are reasonably preventable through the application of evidence-based guidelines. While CMS identified such nonreimbursable hospital acquired conditions in previous rulemakings, it decided to address certain never events, i.e., the surgical errors listed above, through the NCD process. See *Payment Matters*, **August 21, 2008** and **September 27, 2007**.

The NCDs are available through the following links:

- the wrong surgery performed on a patient, www.cms.hhs.gov/mcd/viewdecisionmemo.asp?id=223;
- surgery performed on the wrong patient, www.cms.hhs.gov/mcd/viewdecisionmemo.asp?id=221; and
- surgery performed on the wrong body part,

Associates

www.cms.hhs.gov/mcd/viewdecisionmemo.asp?id=222.

Kristin C. Cilento

Ober|Kaler's Comments: Now that the NCDs are final, providers should carefully review their claims before submitting them to Medicare to assure none include these types of never events.

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