Routinely waiving copays, coinsurance and deductibles is fraud

Commentary: As healthcare costs continue to soar, shrewd employers continue to scrutinize ways to contain the cost of health insurance premiums to maintain a healthy bottom line and workforce and to create a competitive medical benefits package that attracts and retains the best and brightest staff.

To ensure employees receive safe and necessary healthcare and maintain ethical practice, smart healthcare HR department leaders will want to keep their antenna up for any whisper or whiff of providers routinely waiving copays, coinsurance and deductibles for their patients.

Kickbacks are illegal

For years, primary care physicians and specialists routinely waived these cost-sharing amounts as a courtesy to patients who needed medical attention. Today, this practice and providers who advertise “no out-of-pocket costs,” or “insurance only billing,” raise the red flag to insurers as possible health insurance fraud, violating either commercial insurance contracts or Medicare rules. The routine waiver of cost sharing places physicians and patients at grave risk for civil, regulatory and potential criminal liability for insurance fraud.

Also see: “Benefit departments cautioned on hacking threat.”

The only legitimate reason to forgive copays, coinsurance and deductibles is the employee/patient’s genuine financial hardship, documented in the patient’s own handwriting and covering income, assets, expenses, including the local cost of living, the patient’s family size and the extent of the medical bills.

Designed to encourage insureds to be more prudent in spending healthcare dollars, deductibles, copays and coinsurance must be paid by the insureds. No matter how tempting they may be to accept, routine waivers of deductibles, copays and coinsurance are unlawful in most states because they constitute: 1) false claims, 2) violations of the federal anti-kickback statute, and 3) excessive use of items and medical services.

Skew clinical decisions
Kickbacks or improper inducements used to entice patients to get care or more care are nefarious for many reasons. First, kickbacks influence clinical decisions that may not be based on the best interest of the patient and at worst can be dangerous or deadly.

Consider the case of Asad Qamar, MD, the nation’s top Medicare billing cardiologist, who invoiced for his services to the tune of $18 million in 2012. The Sarasota, Florida physician is facing multiple lawsuits claiming he performed possibly thousands of unnecessary medical procedures, paying patients kickbacks by waiving their copayments to encourage them to approve more medical procedures. Qamar and the Institute of Cardiovascular Excellence allegedly billed for expensive and risky interventional procedures when, in fact, less costly procedures were performed, defrauding the federal and state government of tens of millions of dollars.

Also see: “Healthcare data breaches affect employers, benefits security.”

If you think Qamar’s case is bad, consider the case of Farid Fata, MD, a Detroit oncologist, who also made it a practice to waive copayments to perform medically unnecessary procedures. Fata’s case is particularly egregious because not only did he bilk the government of $91 million, he killed patients in his “chemo mill,” administering excessive or unnecessary chemotherapy to hundreds of patients, some of whom were cancer-free. Dr. Evil, as the local press dubbed him, was sentenced to 45 years in prison – quite a concession from the 175-year prison sentence the prosecutors sought.

Increased utilization and costs

Improper waivers alter pricing structures, constitute false claim filing and inflate healthcare costs. For example, if the cost of providing a service is $100, and 20% is to be covered by the patient, the insurance company will then cover 80% or $80. However, if the physician routinely waives the patient’s obligation, then the physician is actually only charging $80 for the service and the insurance company should then be responsible for 80% of $80 or $64. Billing the insurance company for $100 is then considered an actionable false claim. Plus, someone has to absorb the difference between $80 and $60 and that someone is often employers in the form of raised healthcare premium costs.

Inappropriate forgiveness of patient obligations undermines the clinical integrity of the insurance plan’s formulary, or approved list of covered medications, and may increase utilization of medical products and services, which naturally increases the cost of healthcare. For example, because many people choose their prescription medications based on cost, waiving copays may encourage patients to buy more expensive brand-name drugs instead of lower cost generic versions, boosting the cost of healthcare for us all.

No free lunch

Some, if not many, HR professionals may be surprised by the fact that waiving copays, coinsurance and deductibles is fraud. They shouldn’t be surprised, however, that they have a
responsibility to keep employees as safe and healthy as possible and to maintain if not reduce, if possible, healthcare costs.

Smart professionals will keep their eyes out for significant increases in utilization of medical services among employees and for escalating healthcare costs at negotiation time. Obviously HR can’t tell employees that they can’t get healthcare: It’s their benefit and right. But, to get the very best healthcare, employees will want to make sure that their physician’s recommendations are medically necessary, follow clinical guidelines and that there are no “freebies” involved to induce them to undergo unnecessary procedures.

Also see: “5 reasons your health plan needs a compliance assessment.”

HR administrators are counseled to keep their ears to the ground for employees talking about “this doctor didn’t charge me anything …” or “that doctor didn’t charge so-and-so, but he’s charging me.” They’ll want to stay alert and on the lookout for advertisements in the local media and promotions on websites for “no out-of-pocket costs,” “insurance only billing,” “no costs, no fees” and offers of free giveaways. As my father used to say, there’s no free lunch. If it seems too good to be true, it usually is.

Benefits administrators should pay attention to anything that seems suspicious and not above board. Even though investigations are full of anguish and distress, not to mention financial costs, the HR department needs to fully cooperate with the staff of the special investigation unit of their health insurance plan if they reach out during an investigation into healthcare fraud.

Staff education critical

Benefits administrators have a duty to make sure their employees understand how their health insurance works. Staff members should be encouraged to carefully read their Evidence of Coverage booklets, which should include the fact that accepting a waiver of copays, coinsurance and deductibles is a kickback and therefore illegal. The language in the booklets is not complicated, but even the most educated employees may toss the booklets or stuff them in a drawer without looking at them, intimidated by the volume and thickness of the material.

Conscientious benefits leaders walk staff through the booklet so they understand the key benefits and components of their plan, how to use the book, how to contact the health plan most effectively, and how to identify red flags for fraud, like an offer to waive a copay, coinsurance or deductible. The best way to understand a subject is to teach it. That way, when staff members come to you with questions you know the answer and you don’t risk playing any role, even tangential or inadvertently, in fraud because you didn’t know or had the wrong facts. It’s to everyone’s benefit to have the most knowledgeable and healthy workforce.

Also see: “Patient safety costs employers more than they think.”

For more information about state and federal laws governing health insurance fraud, contact the Office of Inspector General of the United States Department of Health and Human Services, at oig.hhs.gov, or talk to your health plan broker, legal counsel or compliance offer.
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