Cunningham Group

Presents

Governmental Regulatory Insurance Coverage

RAC/ZPIC/STARK/EMTALA

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About Cunningham Group

▪ Cunningham Group has over 47 years of professional liability experience across the nation.

▪Provides full spectrum of products
- Medical Professional Liability
- Home Healthcare Professional Liability
- Non-Standard Physicians
- Social Services
- Managed Care
- Directors & Officers (including EPL)
- Regulatory Business Interruption
- Network Security
- MEDEFENSE™ Plus and e-MD™

Changing Regulatory Climate

The recent expansion of government regulations that address privacy and identity theft makes healthcare providers vulnerable for allegations of fraud, abuse and electronic data misuse.

- Recovery Auditor Contract Program (RAC)
- Zone Program Integrity Contractors, MAC, MIC
- Variety of State Laws

Recovery Audit Contractor (RAC) Program

- Aggressive program to find and prevent waste, fraud and abuse in Medicare and now, Medicaid

- Targeted classes include, but are not limited to:
    - Hospitals
    - Medical Groups
    - Physicians
    - Providers of Durable Medical Equipment
    - Outpatient Rehabilitation Facilities
    - Home Healthcare Agencies

- Audits conducted by third-party contractors — paid on contingency fee basis for overpayments they find.

- Three-year test program in California, Florida, New York, Massachusetts, South Carolina and Arizona collected over $900 million.

Source: http://www.medicalcodingaudits.com/

Types of Errors Found

- Information in medical record did not support the claim
- Discharge status/transfers – claim indicates discharge to home, but medical record indicates beneficiary was discharged to another hospital or home with home care
- Wrong number of units billed
- Medical necessity
- Incorrect payment amounts
- Non-covered services
- Incorrectly coded services
- Duplicate services

8%

17%

40%

35%

- Incorrectly Coded
- Other
- No/Insufficent Documentation
- Medically Unnecessary
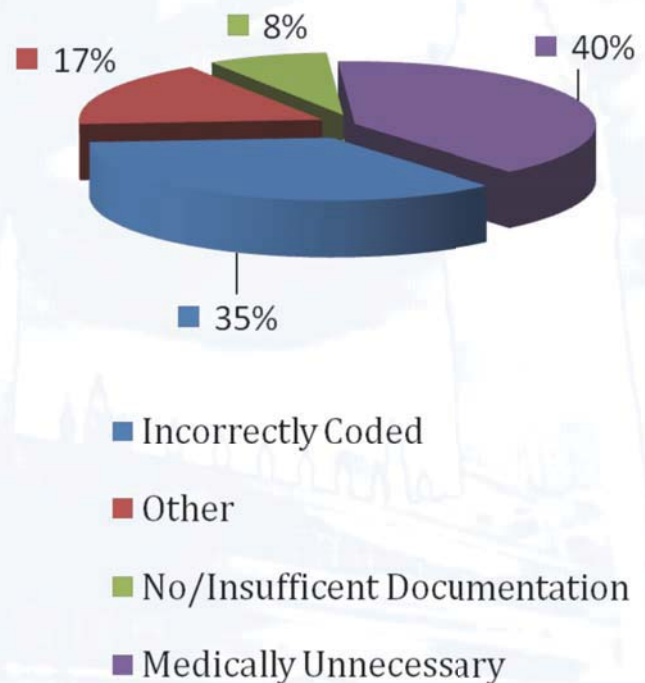
What is Covered

- Defense and Fines and Penalties Reimbursement For Billing Errors, HIPAA, EMTALA and STARK proceedings by:

    - Governmental Agencies

    - Qui Tam Plaintiff

    - Contractors Working On Behalf Of The Government

    - Commercial Payers

- EMTALA *(Emergency Medical Treatment and Active Labor Act)*

- STARK *(Physician Self-Referral)*

- HIPAA *(Patient Privacy)*

Summary Review

- Program covers legal fees, fines and penalties associated with government audits

- Restitution of Medicare and Medicaid payments is the purpose of this program

- Improved outcomes utilizing attorneys experienced in the appeals process

- Consent to settle is with the insured

- Approved Shadow Audits included in the program

Government Audit plus Cyber Coverage

Demand for Cyber/Privacy Insurance is Increasing

- Growing Problem
  - 662 publicized breaches in 2010 with over 16 million records exposed[1]
  - Network threats and vulnerabilities are getting worse
  - Identity theft is now the #1 crime in the United States
  - Average data breach costs per year to an organization in 2010: $7.2 Million[2]
  - 48 states have enacted privacy laws in just the last 5 years

- Large scale breaches in the news has increased public awareness
  - Sony Corp. (103 Million records)
  - Heartland Payment Systems (130 Million records)
  - RockYou, Inc. (32 Million records)

1. Identity Theft Resource Center
2. Five Countries: Cost of Data Breach, Presentation by Dr. Larry Ponemon, www.ponemon.org/local/upload/fckjail/generalcontent/18/file/2010%20Global%20CODB.pdf

What exactly constitutes Private Information?

- Electronic and Privacy Exposures:

    - Medical records (electronic and paper)

    - Billing information (credit cards, addresses, bank information, etc.)

    - Insurance information

    - Social Security numbers

    - Employee information

How do Breaches occur?[1]

40% of breaches are caused by simple negligence
- Lost laptops compromise the majority of this percentage (U.S. Airports report about 12,000 lost laptops per week[2])

36% of breaches are caused by a system glitch
- Technical and Programming Errors as well as electrical power surges

24% of breaches are caused by a malicious or criminal attack
- Rogue employees make up a large component of this percentage followed by cyber crimes

1. Five Countries: Cost of Data Breach, Presentation by Dr. Larry Ponemon, www.ponemon.org/local/upload/fckjail/generalcontent/18/file/2010%20Global%20CODB.pdf
2. http://travelsentry.blogspot.com/2008/08/airport-lost-laptop-study-offers.html

Contact Info

- David Leander
- Senior Sales Director
- 7234 W. North Ave., Suite 101
- Elmwood Park, Illinois 60707
- (800) 824-0137 toll free
- (708) 310-3663 fax
- dleander@cunninghamgroupins.com
- www.cunninghamgroupins.com