REPORT OF THE COUNCIL ON MEDICAL SERVICE

CMS Report 2-I-14

Subject: Privacy Issues Regarding Insurance Company Explanation of Benefits (Resolution 801-I-13)

Presented by: Jack McIntyre, MD, Chair

Referred to: Reference Committee J (Melissa J. Garretson, Chair, MD)

At the 2013 Interim Meeting, the House of Delegates referred Resolution 801, "Privacy Issues for Minors Regarding Insurance Company Explanation of Benefits," which was introduced by the Medical Student Section. Resolution 801-I-13 asked:

> That our American Medical Association (AMA) advocate for maintaining privacy regarding the doctor patient relationship for adults and dependents who are insured through their spouse, parent, or guardian; against allowing insurance companies to send Explanations of Benefits containing sensitive medical information regarding both adults and dependents to anyone other than the patient or their health care provider; and that Explanations of Benefits be made available only if an insurance claim has been denied, and in this case for the information to be sent directly to the (adult or dependent) patient, who may then choose to discuss it with their physician or share it with their spouse, parent, or guardian.

This report provides background on Explanation of Benefits (EOB) privacy issues for minors and adults, summarizes methods of establishing privacy for minors and adults, outlines health insurer privacy practices, highlights AMA policy and ethical opinions, and presents policy recommendations.

BACKGROUND

Private health insurance companies routinely issue an EOB form directly to the primary insurance holder containing information on how a claim from a health provider was paid. EOBs generally contain the patient's name, insured policy number, claim number, provider, type and date of service, service charge, amount covered, and the policy holder's financial responsibility. Primary insurance holders receive EOBs for everyone covered under their plan, including spouses, domestic partners, young adults and/or minor children. The issuance of EOBs to policy holders may disclose sensitive information about the medical care of other covered individuals outside of the confidential patient-physician relationship.

Maintaining confidentiality is especially important to patients seeking treatment for sensitive issues such as mental health, substance use, sexual or reproductive health, and intimate partner violence. It is widely acknowledged by both patients and physicians that a lack of, or perceived lack of, confidentiality is a primary factor inhibiting adolescents and young adults from seeking medical care for sensitive issues. Some minors and young adults have resorted to using publicly funded health clinics to ensure privacy rather than using the private health insurance that is available through their parents or guardians.

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Health care privacy will become more of a concern as an increasing number of young adults obtain health insurance as dependents of their parents, guardians, spouses or domestic partners. A provision of the Affordable Care Act (ACA) mandates that any insurance plan already offering dependent coverage must offer the same level and same price of health insurance coverage to dependents until the age of 26.

ESTABLISHING PRIVACY FOR MINORS AND ADULTS

Minors aged 12-17

Certain health issues that adolescents encounter can have potentially dire consequences if untreated. State statutes vary, but in many states minors can consent to health care services such as access to contraception, sexual and reproductive health care, HIV testing and treatment, mental health services, and drug and alcohol treatment without the expressed permission of a parent or guardian. In these situations, consent and payment for health care services can be handled privately between the minor patient and provider.

For a dependent with private health insurance through a parent or guardian, receiving sensitive and other services from a primary care physician with whom there is an established relationship can be beneficial. All minors of the same age do not have the equivalent capacity to manage their own health care needs. For an individual aged 12-17, the minor, his/her parent(s) and physician can work together to establish an individualized treatment plan that takes into consideration the relationships between the minor, his/her parent(s) and physician, while increasing in privacy as the minor ages into adulthood. When treating minors, physicians need to understand their state's specific legal requirements for health care privacy.

Adults aged 18-26

Age 18 is often referred to as the "age of majority" when individuals can make their own decisions independent of their parents. However, state regulations determine the age of majority, and although most states recognize individuals as adults at age 18, a few do so at age 19 or 21. When young adults reach the age of majority in their state, they are legally able to make their own decisions about the health care services they receive. As a result, young adult dependents may assume that information about their health care services is confidential. However, in order to establish privacy, dependents need to communicate this desire to both their physicians and health insurers.

Adults

An adult of any age covered by the health insurance of his/her spouse or domestic partner may have the same privacy concerns as minor and young adult dependents. Adult dependents covered under the health plans of others also need to be informed about how to communicate their desire for privacy to both their physicians and health insurers.

HEALTH INSURER PRIVACY PRACTICES

Privacy for Dependents

Under federal privacy regulations outlined in the Health Insurance Portability and Accountability Act (HIPAA), patients have the right to request that a health insurer send EOBs to an address other than their home if the individual is concerned that a family member, such as the policy holder, may

read the EOB and become abusive toward the individual. In these cases, the health insurer must accommodate the request, unless the individual fails to provide information about payment, an alternative address or method of contact. A HIPAA Privacy Rights Request Form provides the avenue to request this privacy, however, it is not routinely offered to patients and some patients may not have alternative methods of contact. Physicians need to know that even if their intention is to keep communications with their patients confidential, unless the patient submits a HIPAA Privacy Rights Request Form, information could be included on an EOB addressed to the policy holder. The AMA has developed a model HIPAA Privacy Rights Request Form,[1] available online, for physicians to provide to their patients.

Claim Denials Sent to Dependents

Several states have passed laws to limit or modify the use of insurance EOBs in order to protect the privacy rights of minor and adult dependent patients. Examples of strategies that have been considered or implemented to protect confidentiality include: sending an EOB only if a balance is due; sending an EOB directly to the patient; providing minors with confidential billing for the treatment of sexually transmitted diseases; allowing a minor to refuse their parents' request for an EOB or claim denial; requiring health insurers to honor requests for confidential communications from all individuals obtaining sensitive services; applying a generic current procedural terminology code for sensitive services; and requiring health insurers to communicate directly with adult patients up to age 26 who are covered as dependents on their parents' plan.[2,3] The Council reviewed a document that describes some of these approaches.[3]

The requests in Resolution 801-I-13 to send an EOB only if a claim has been denied and for the information to be sent directly to the dependent have each been enacted in at least one state. Even so, implementation depends on state laws, which vary, and there is a lack of data on how these approaches are working. In addition, a denied claim requires the responsible party to act quickly to resolve the denial or pay the claim. While the goal is to maintain privacy, the proposed solutions in Resolution 801-I-13 may create unintended consequences both for the dependent and policy holder.

It is the policy holder's responsibility to pay a denied claim. A denied claim can occur for a variety of reasons, such as when the services are not covered under the health policy, are coded incorrectly, or determined medically unnecessary. If a dependent requests that the health insurer send EOBs and the physician send bills directly to him/her, then the financial responsibility falls on the dependent, including in the case of a denied claim. Rectifying a denied claim involves a series of communications, including filing an internal appeal asking the health insurer to take another look at the claim, and if needed, requesting an external review for an independent third party to review the case. The necessary steps to appeal a denied claim need to be completed in a timely manner, and if not resolved, the financial responsibility could fall on the dependent. If the physician's bill does not get paid, then communications will eventually be sent to the policy holder to pay the bill and/or the bill will go to a collection agency.

When choosing a health insurance plan, policy holders consider financial obligations such as the annual deductible, monthly premium, coinsurance and possibly the family's health care expenses from the previous year. Policy holders need to know the anticipated expenses to choose the appropriate plan for their families. When choosing a health savings account (HSA), the policy holder considers medical expenses from the previous year and anticipated future expenses in order to determine how much money to save in the HSA. Importantly, an HSA policy holder monitors the available amount of money in the account. If the balance unexpectedly decreases due to unknown expenses by a dependent, the policy holder cannot accurately estimate financial responsibility for the family's future health care needs. Furthermore, the decrease in the HSA's

available balance could alert the policy holder of unexpected charges. Accordingly, sending a denied claim directly to the dependent may not be in the best interest of the dependent or policy holder.

Electronic Privacy

Many policy holders are able to access all claims filed under their health insurance policy on their health insurer's website through a patient portal containing the services provided for each covered individual, including dependents. Some health insurers are offering policy holders the option of receiving EOBs in a paper or electronic format. Given the increasing use of patient portals by policy holders and adoption of electronic health records by physicians, electronic privacy safeguards are needed.

The Office of the National Coordinator for Health Information Technology (ONC), was established within the US Department of Health & Human Services (HHS) to promote a national health information technology infrastructure and oversee its development. In May 2014, ONC successfully concluded its Data Segmentation for Privacy Initiative (DS4P), a national pilot program allowing physicians to share portions of an electronic medical record while suppressing others, such as sensitive information pertaining to mental health or substance use treatment. Given the pilot's success, ONC intends to encourage the adoption of the DS4P standard into health information technology systems and products, which could potentially allow patients to control what health information their providers share electronically, and with whom.

AMA POLICY AND ETHICAL OPINIONS

The AMA has long-standing policy and ethical opinions supporting patient-physician confidentiality and privacy in the context of obtaining health care. Although there are exceptions to the rule, the AMA *Code of Medical Ethics* states that information disclosed to a physician during the course of the patient-physician relationship is confidential to the utmost degree.

Ethical Opinion E-5.059 notes that privacy is not absolute, and must be balanced with the need to provide efficient care and availability of resources. It states that physicians should be aware of and respect the special concerns of patients regarding privacy, and that patients should be informed of any significant infringement on their privacy of which they may otherwise be unaware. Ethical Opinion E-5.055[1] states that physicians who treat minors have an ethical duty to promote the autonomy of minor patients by involving them in the medical decision-making process to a degree commensurate with their abilities. Ethical Opinion E-5.055[2,3] and Policy H-60.965[1-5] outline how physicians can provide confidential services to minors while striking the balance of including parents when appropriate and necessary.

Regarding health insurer practices, Policy H-320.979[2] supports expressing AMA objections to major health insurers reporting insurance company practices that potentially jeopardize a physician's ethical responsibility to protect patient confidentiality. The AMA encourages health insurers to develop a method of listing services that preserve confidentiality for adolescents (Policy H-60.965[8]) and the AMA acknowledges the importance of confidentiality of patient records, regardless of the form in which they are stored (Policy H-315.990).

Policy H-320.979[3] encourages state and county medical associations to work with local carriers to solve problems created by insurance company requirements that potentially jeopardize a physician's ethical responsibility to protect patient confidentiality. In addition, the AMA encourages state and county medical societies to become aware of the nature and effect of laws and

regulations regarding confidential health services for adolescents in their respective jurisdictions. State medical societies should provide this information to physicians to clarify services that may be legally provided on a confidential basis. In addition, medical societies should evaluate laws on consent and confidential care for adolescents and to help eliminate laws that restrict the availability of confidential care (Policy H-60.965[6,9]).

DISCUSSION

The AMA acknowledges that confidential care for adolescents is critical to improving their health (Policy H-60.965[1]). Furthermore, the AMA encourages physicians to involve parents in the medical care of adolescent patients when it is in the best interest of the minor. If in the opinion of the physician, parental involvement would not be beneficial, parental consent or notification should not be a barrier to care (Policy H-60.965[3]). The Council suggests the reaffirmation of Policy H-60.965.

When a physician determines that specific services for an adolescent or adult patient should remain private, relevant information should be suppressed throughout the entire delivery system, starting with the physician's practice. A physician practice could use colored forms and/or stickers on all private paperwork. In addition, when feasible, the physician's office should identify private information in electronic health records. These safeguards could help eliminate unintentional privacy breaches by the physician's office or other entities such as a pharmacy, hospital, or health insurer. The Council believes that electronic medical record (EMR) vendors should be required to create mechanisms that alert health care professionals of confidential medical information that should be safeguarded. In addition, the Council believes that physicians should clearly identify health care information on both paper and electronic records that the patient has requested to be kept private.

All minors of the same age do not have the same capacity to manage their health care needs. The Council believes that physicians should develop individualized treatment plans for minors aged 12-17, in collaboration with parents or guardians that outline expectations for the services provided while transitioning toward increased privacy as the minor ages into adulthood.

Physicians need to know that even if their intention is to keep communications with their patients confidential, unless the patient submits a HIPAA Privacy Rights Request Form, information could be included on an EOB addressed to the policy holder. The Council suggests encouraging physicians to inform their patients that they can request confidential communications from their office as well as the health insurer by alternate means or locations than the policy holder's contact information, and to provide their patients with a HIPAA Privacy Rights Request Form.

AMA Policy H-60.965[8] encourages health insurers to develop a method of listing the services provided that would preserve confidentiality for adolescents. The Council believes that health insurers should develop a method of listing health care services on EOB statements that would preserve confidentiality for all insured individuals, such as using non-descriptive terminology for the services provided.

Since privacy information from health insurers is mailed directly to policy holders, dependents may be unaware of their ability to request confidential communications. The Council believes that health insurers should communicate clear procedures to all insured dependents on how to request confidential communications. Similarly, given the increasing use of patient portals by policy holders and adoption of electronic health records by physicians, electronic privacy safeguards are needed. The Council believes that health insurers should create privacy protections for all insured

individuals on information that is contained on their Internet websites. The Council is hopeful that the multipronged approach contained in these recommendations will protect the privacy interests of patients and preserve the financial interests of policy holders.

RECOMMENDATIONS

The Council on Medical Service recommends that the following be adopted in lieu of Resolution 801-I-13, and that the remainder of the report be filed:

1. That our American Medical Association (AMA) reaffirm Policy H-60.965, which supports confidential care for adolescents as a critical component to improving their health and encourages physicians to determine the level of parental involvement to ensure that it is not a barrier to care. (Reaffirm HOD Policy)

2. That our AMA advocate that electronic medical record (EMR) vendors be required to create user-triggered mechanisms that alert health care professionals of confidential medical information that should be safeguarded. (New HOD Policy)

3. That our AMA encourage physicians to clearly identify health care information on both paper and electronic records that the patient has requested to be kept private. (New HOD Policy)

4. That our AMA encourage physicians to develop individualized treatment plans for minors aged 12-17, in collaboration with parents or guardians, that outline expectations for the services provided and transitions toward increased privacy as the minor ages into adulthood. (New HOD Policy)

5. That our AMA encourage physicians to inform their patients that they can request confidential communications from their office and health insurer by alternate means or locations than the policy holder’s contact information, and to provide their patients with a Health Insurance Portability and Accountability Act (HIPAA) Privacy Rights Request Form. (New HOD Policy)

6. That our AMA advocate that health insurers be required to develop a method of listing health care services on Explanation of Benefits statements that would preserve confidentiality for all insured individuals. (New HOD Policy)

7. That our AMA advocate that health insurers be required to communicate clear procedures to all insured dependents on how to request confidential communications. (New HOD Policy)

8. That our AMA advocate that health insurers be required to create privacy protections for all insured individuals on information that is contained on their Internet websites. (New HOD Policy)

Fiscal Note: Less than $500.

REFERENCES

[1] American Medical Association. HIPAA Privacy Rights Request Form. 2014. Available at: https://download.ama-assn.org/resources/doc/washington/x-pub/hipaa-privacy-rights-request-form.doc
[2] English, A, Benson Gold, R, Nash, E, Levine, J. Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies. Guttacher Institute. 2012. Available at: http://www.cahl.org/confidentiality-for-individuals-insured-as-dependents-a-review-of-state-laws-and-policies-2012/
[3] Tebb, K.P, Sedlander, E, Pica, G, Diaz, A, Peake, K, Brindis, C.D. Protecting Adolescent Confidentiality Under Health Care Reform: The Special Case Regarding Explanation of Benefits (EOBs). Philip R. Lee Institute for Health Policy Studies and Division of Adolescent and Young Adult Medicine, Department of Pediatrics, University of California, San Francisco. 2014. Available at: http://healthpolicy.ucsf.edu/Protecting-Adolescent-Confidentiality