

August 7, 2000

Norman C. Payson, MD
Chairman and Chief Executive Officer
Oxford Health Plans, Inc.
800 Connecticut Avenue
Norwalk, CT 06854

Dear Dr. Payson:

The American College of Physicians–American Society of Internal Medicine (ACP–ASIM) objects to the inappropriate manner in which Oxford Health Plans, Inc. is conducting post-payment audits of evaluation and management (E/M) service claims submitted by physician plan members. ACP–ASIM represents approximately 115,000 internists and medical students. We are aware of the overpayment request letter that the law firm representing Oxford has sent to New York pediatricians. ACP–ASIM finds the Oxford method of determining and recouping overpayment amounts baffling and we urge Oxford to immediately discontinue its use.

ACP–ASIM is troubled by the fact that the overpayment request letters cite a government national benchmark for normal distribution of E/M service codes that does not exist. It is our understanding that the amount of the overpayment in which Oxford seeks to recoup from each physician is based on how his or her billing pattern deviated from this national benchmark. The letters attribute the Oxford-determined overpayment amount to “significant upcoding compared to the Health Care Financing Administration’s (HCFA) national benchmarks.” The letter also states that HCFA “collected data and audited charts to establish benchmarks for normal distribution...for both the commercial and Medicare lines of business.” HCFA officials confirmed for us that the agency does not maintain, nor has it ever developed, an E/M service distribution benchmark for auditing purposes. In fact, we are aware that HCFA insisted that Oxford cease its reference to this non-existent benchmark. ACP–ASIM is very concerned that the law firm representing Oxford would justify its requests to recoup payments made to physicians using false statements.

The Oxford practice of determining an overpayment amount based on a physician’s deviation from a typical billing pattern is entirely inappropriate regardless of the billing frequency benchmark used. While it is reasonable to audit individuals whose billing pattern stands out from their colleagues (i.e. those who practice the same specialty in the same geographic area), it is outrageous for Oxford to determine an overpayment amount without reviewing documentation pertaining to a single claim. Physicians who treat a disproportionately sick patient population may be justified in billing higher levels of E/M services. The documentation in the patient’s record ultimately determines if an E/M service is furnished to the extent to which it was billed.

Oxford must abandon this approach before it does irreconcilable harm to its relationship with its member physicians.

ACP–ASIM notes that Oxford violated its own audit process as published in a provider bulletin, MS-00-313, under the heading “Billing Pattern Analysis and Action: Update.” The published policy states that Oxford will “review individual circumstances of each physician in the event that there is clinical justification for the aberrant billing pattern.” The policy states that this review is to occur after Oxford contacts physicians with a billing pattern that varies significantly from the national benchmark. Demanding that physicians repay overpayment amounts determined without assessing documentation from a single record blatantly contradicts the policy of reviewing individual cases to assess whether a billing pattern is clinically justified.

Theoretically, Oxford should identify and send additional payments to physicians who have undercoded. According to the Oxford logic, physicians who frequently bill low level E/M codes—falling under the normal distribution—must have been underpaid. These physicians should receive a sum that would make their reimbursement equivalent to payment for a normal billing pattern regardless of which level of service is supported in the documentation in the patients’ records. Although we would oppose a system that reimburses physicians based on the normal distribution of E/M service billings, this theoretical example illustrates the absurdity of Oxford’s actions.

We are concerned that Oxford may expand the scope of these unreasonable post-payment audit to target additional physicians, including physicians who practice medical specialties other than pediatrics. It is our understanding that an attorney representing Oxford stated that the letters received by New York pediatricians were just the “first wave” of overpayment requests. Although the attorney also noted that the overpayment requests have been sent to “extreme outliers,” we question how many waves of letters can be sent before it affects physicians Oxford believes to be outside the norm by a lesser extent.

ACP–ASIM recognizes Oxford’s right to review medical record documentation to ensure it supports the level of service billed. We also recognize Oxford’s right to request overpayments when the documentation fails to justify the service billed. However, we believe that Oxford must disclose the frequency benchmark that it uses to determine which physicians will be audited. Further, Oxford must make the documentation standard it uses to determine the appropriateness of each service known to its member physicians. Ensuring that member physicians have a clear understanding of the standards to which they are held accountable is necessary for Oxford and other health plans to maintain a positive working relationship with physicians. Holding physicians to a non-existent standard then arbitrarily determining an overpayment amount is guaranteed to create an environment of distrust that cannot be easily rectified.

Sincerely,

Sandra Adamson Fryhofer, MD, FACP

President