

Benefit Brief



SUBJECT: Preventable Medical Errors

DATE: June 19, 2008

This Benefit Brief discusses recent decisions by states, insurers, and CMS regarding non-payment of preventable medical errors.

An increasing number of states and insurance companies are adopting policies to exclude payment for care related to preventable medical errors. This action follows a decision by the Centers for Medicare and Medicaid Services (CMS) to deny payment to hospitals for the added costs of care related to eight hospital-acquired conditions (see list below) beginning October 1, 2008.

The National Quality Forum (NQF), an organization developed to improve the quality of healthcare through research, performance measurement, and public reporting, has identified 28 serious reportable events, or "never events" (see list below). Never events are errors in medical care that are clearly identifiable, preventable, and serious in their consequences for patients, and that indicate a real problem in the safety and credibility of a health care facility. Insurers are changing their plans and policies to exclude coverage for some or all of the preventable medical errors on the CMS or NQF lists.

Cost Savings and Improved Quality of Care

Never events result in patient deaths, disability, and additional health care costs. The costs of these medical errors, including the procedures required to repair the damage, are passed on to the employer (though increases in premiums or claims) and ultimately to the patient. Employers may also incur additional costs from lost employee productivity, disability claims, hiring and training replacement staff, and court or attorney fees. Employers and patients should begin to see cost savings and improvements in the quality of health care as more insurers refuse to cover medical errors.

This move by CMS is part of their ongoing effort to improve quality and efficiency of care. The belief is that reducing or eliminating payments for medical mistakes will force providers to improve the quality of care. CMS now requires hospitals to identify and document secondary diagnoses that are present when a patient is admitted so they can identify conditions that develop during a patient's hospital stay.

Insurers say they are implementing these policies to encourage hospitals to take action to prevent serious medical errors and improve patient safety, rather than to save money.

Insurance Providers

Aetna, Blue Cross and Blue Shield, Cigna, Health Partners, Inc., United Healthcare, and WellPoint are developing and implementing non-payment policies for certain preventable medical errors and incorporating them into their hospital contracts. Most of these contractual changes will prohibit providers from even billing for care related to never events. Some insurers are also implementing reportable event policies that require hospitals to report certain medical errors, conduct investigations, and take action to prevent future errors.

State Action

Some states have enacted legislation requiring the reporting of incidents on the NOF list. Hospitals in 11 states have agreed to waive fees for certain never events; in four of these states, hospitals will waive fees for all never events. In the remaining 39 states, patients and/or their insurance providers may still be billed for preventable medical errors. Some state hospital associations are adopting policies that would prohibit billing patients and insurance companies for certain never events. The National Business Group on Health and the Leapfrog Group, two Washington-based consortiums focused on patient safety, have announced their support for nonpayment of never events.

Pennsylvania Legislation

In April 2008, the Pennsylvania House of Representatives approved legislation that will allow insurers to deny payment to hospitals for preventable medical errors that result in a patient's death, loss of body part, serious disability, or loss of bodily function lasting more than seven days. The Preventable Serious Adverse Events Act also prevents health care providers from seeking payment for these errors from patients. The bill has gone to the Senate for approval. The Pennsylvania legislation uses the CMS list of never events and adds *unexpected removal of an organ* and *unexpected amputation of a limb*.

Language Addressing the Nonpayment Policy

The PA bill requires language addressing the payment policy for preventable serious adverse events to be included in the contract between the insurance company and health care provider. Most insurance companies are adding never event policies to hospital and physician contracts as they come up for renewal. Employers may want to review the exclusions in their plan documents to see if preventable medical errors are addressed.

CMS List

The eight events identified by CMS are listed below:

- Pressure ulcers
- Air embolism
- Blood incompatibility
- Objects left in patients after surgery
- Patient falls resulting in injury or death
- Catheter-associated urinary tract infections
- Vascular-catheter-associated infections
- Mediastinitis after cardiac artery bypass grafting

NQF List

The 28 never events identified by NQF are listed below:

- Surgery on the wrong body part
- Surgery on the wrong patient
- Wrong surgical procedure performed on a patient
- Object left in a patient after surgery
- Death of a patient who had been generally healthy during or immediately after surgery for a localized problem
- Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics
- Patient death or serious disability associated with the misuse or malfunction of a device
- Patient death or serious disability associated with intravascular air embolism
- Infant discharged to the wrong person
- Patient death or disability associated with the patient disappearing for more than four hours
- Patient suicide or attempted suicide resulting in serious disability
- Patient death or serious disability associated with a medication error
- Patient death or disability associated with transfusion of blood or blood product of the wrong type

- Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy
- Patient death or serious disability associated with the onset of hypoglycemia (drop in blood sugar)
- Death or serious disability associated with failure to identify and treat hyperbilirubinemia (blood abnormality) in newborns
- Severe pressure ulcers acquired in the hospital
- Patient death or serious disability due to spinal manipulative therapy
- Patient death or serious disability associated with an electric shock
- Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances
- Patient death or serious disability associated with a burn in the hospital
- Patient death associated with a fall suffered in the hospital
- Patient death or serious disability associated with the use of restraints or bedrails
- Any instance of care ordered by, or provided by, someone impersonating a physician, nurse, pharmacist, or other licensed healthcare provider
- Abduction of a patient
- Sexual assault on a patient
- Death or significant injury of a patient or staff member resulting from a physical assault in the hospital
- Artificial insemination with the wrong donor sperm or donor egg

If you have questions about nonpayment of expenses associated with preventable medical errors, please contact Danielle Omans at The Benecon Group at domans@benecon.com or at the number below.

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