

Dueling Consent Agreements! ¹

To date, CMS guidance leaves many unanswered questions that challenge the implementation of CCM (CPT 99490). This discussion is confined to the issue of competing consent.

It is possible for a CCM qualifying patient to give consent to more than one provider in any month, agreeing that services may be delivered and billed on their behalf by two or more providers.

Due to very high patient retention at PCP practices, the likelihood of competing consent agreements may turn out to be immaterial. Although specialists are permitted to deliver the scope and services of CCM, CMS intends the benefits of the relief offered by the new code to be for PCPs and focuses the regulation on patients' interactions with Primary Care Physicians. High patient retention makes PCPs best able to follow the care for a chronically ill patient through all of their diseases and disease states. By providing all that is required under the regulation, PCP practices are most impacted by the benefits of the reimbursement provided under the new code.

CCM patients are chosen and services are performed on their behalf because they are the most seriously ill patients. Because of their illnesses, they may not understand that consent may only be given to one provider per calendar month. Under many possible circumstances, patients may not keep careful track of what papers they have signed from month to month and provider to provider, despite an introductory visit with the provider during which the patient is advised about the limitation. **Providers should counsel their patients carefully and receive confirmation that the patient understands the CCM rules.**

In the event of competing consent, which consent agreement prevails?

CMS guidance is as follows:

Obtain informed patient consent confirmed in writing from each qualifying patient as a condition for billing the CCM CPT Code 99490.

For any qualifying patient, only one provider may bill for CCM CPT 99490 in any one calendar month for services delivered in that month.

Billing can be done for the 20-minute minimum time requirement for non-face-to-face services as soon as the threshold is reached. It is not necessary to wait until month-end to bill.

If a patient revokes consent, providers delivering services with a consent agreement in place may provide services through the month end for services delivered on behalf of that patient for the calendar month in which the revocation occurs as long as the minimum time and all other requirements of CCM have been met.

The existing consent agreement, effective date, revocation date and revocation effective date must be recorded in the provider's CEHRT.

What may not be known for sure with respect to CCM patient consent:

The patient actually has signed only one consent form with one provider for the calendar month in which services are being provided and billed. In the case where two or more providers are billing under the code for the same patient in any calendar month:

- Which consent agreement prevails?
- What are the obligations of the overruled provider?
- Which provider will be paid?

The following discussion summarizes the examination of existing CMS regulations, guidance, clarifications and prevailing thought among community advisory participants.

Which consent would prevail?

To date, CMS is inconclusive on this subject. Prevailing thought says that the last agreement signed is the effective agreement. It is anticipated that the latest signed authorized provider simply accepts succession for future months under this circumstance, and does not pursue the month(s) under dispute for such little gain. Hopefully, future guidance will support the concept that "signing with provider #2 effectively initiates that provider being the CCM provider beginning the 1st of the following month".¹

¹ David Harlow in professional correspondence 6/30/2015

Prevailing thought that the last consent agreement signed is considered the effective agreement could be supported by centering on the issue of patient choice meaning that the most recent election is the one in force. Consistently applied, the last signed contract reflects the most recent wishes and truest intentions of the patient, it is then assumed that the patient revokes all of his or her prior consents.

What are obligations of the overruled provider?

On challenge, if another agreement is determined to be in effect during a provider's service dates, that provider would be obligated to return the fees received to the payer(s). "In an instance of the first to bill being the practice that was 'replaced', the payment would have to be recouped and paid out to the other practice."¹

Which claim would be paid?

With respect to payments, the "first in-first out" rule applies. The first claim submitted and processed will be the first paid. The provider who bills first and whose claim is processed first will be paid, with reconciliation of competing claims to be determined at a later date.

Dulcian advises all practices to follow guidance carefully with respect to counseling patients about CCM. Document the visit during which guidance was provided in the CERT along with effective dates, delivery dates of written consent, and revocation of the consent documents for each patient. This issue should not interfere with the benefits of delivering CCM.

Although these services may be billed by specialists, CMS states clearly that the scope of service of CCM under the regulation are really most compatible with Primary Care Physicians, Family Care Physicians, and Internists. The CMS legislation is directed at PCPs that are typically those practices best able to deliver the services and plan to improve the health and well-being of chronically ill patients under the definition of this regulation. PCPs are also the practices most in need of the financial relief that this regulation provides.

For practices of this type, patient retention is high. This regulation allows them to offer patients increased information, continuity of care, and improved access to care. These issues are all very high on the list of patient priorities.

PCPs, Family Practices and Internists should pursue CCM and CCM outsourced tools and services in support of their ongoing efforts to deliver the best care to their patients. This may help to spare patients unnecessary hospital stays and ease patient frustration of conflicting or incomplete information about their care.

Dulcian personnel can help your organization create a cost-effective and well thought out implementation of Chronic Care Management (CCM). Using our time-tested business rules approach, we can turn complex regulations and guidelines into flexible, user-friendly software to manage your patients' chronic care as well as your office's associated billing, record keeping, and documentation. The resulting system will be able to handle workflow design, care plan development, patient communication, and billing. Our services include training of your personnel to effectively and efficiently use the completed system.

We welcome any and all questions or comments on this topic.

¹ David Harlow in professional correspondence 6/30/2015