

# Prove It To Me

## FACT OR OPINION — CLIENTS WANT TO KNOW

By Greg Wehrman



**“PROVE IT TO ME!”** How many times have we all heard that from a client? If you have been billing long enough, you have surely been asked many times by various clients (or even the same client over and over) about some policy you have that they do not like or understand. Or perhaps they may inquire about some new way of billing they heard of that “other doctors are doing.” In any case, with so many continual changes occurring in the industry, your clients will invariably question your answer.

In March, I attended my first HBMA Compliance Course. The true worth of the Compliance Course was not so much the curriculum, even though it was amazingly informative and relevant. The true worth was not the presenters, even though they were outstanding. The true worth in my opinion was the interaction I had with my peers. I learned the most from conversing with colleagues during a break or at night over a cocktail.

An “authoritative source” is the official source material that you can cite in response to a client’s questions. Unless you present your reply professionally and quote your source for that information, you may be expressing your own opinion of the facts, and this might just some day get you in trouble. Your reply may be perfectly correct. However, it is the client’s perception of your reply that matters.

During the Compliance Course, much was discussed on the subject of, “How much risk are you willing to take?” Compliance is not entirely about right or wrong. Instead it is about reducing your exposure (and your clients’ exposure) to negative outcomes, whether they consist of angry patient phone calls or being part of a fraud investigation or some sort of lawsuit. Rest assured that a smart client will save every email, fax or other correspondence you send and hold you to it. If your clients act upon your advice, and it is later found to be wrong, they will blame you for improper advice.

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If your clients act upon your advice, and it is later found to be wrong, they will **point their finger at you** and blame you for improper advice.

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This article is not meant as an endorsement of the Compliance Course, but perhaps it should be one. Instead, this article is about a topic that was inspired by a conversation I had with some fellow HBMA members.

The epiphany I had was that there are huge differences between the concept of an “authoritative source” and an “opinionated source.” You will not find this explained in the content of the Compliance Course. It definitely was not in someone’s PowerPoint presentation. This realization first struck me as I listened to one of the attendees ask a question during a presentation.

Webster’s Dictionary defines authoritative as: “1. **a** : having or proceeding from **authority** : **official** <authoritative church doctrines> **b** : showing evident **authority** : **definitive** <a most authoritative literary critique>.” Whereas, it defines opinionated as: “*unduly adhering to one’s own **opinion** or to preconceived notions.*”

bursement associated with Medicare and the pending fallout of Health Care Reform, I have had several clients ask me, “Is it okay for me to just bill a Medicare patient cash?” It is how you reply that will cause the client to perceive you as a professional with vast experience or a novice biller or something in between. How do you want to be perceived by your client? Your answer might be rated as bad, better or best. Bad would be, “No it is illegal.” A better reply would be, “No, it is illegal unless you have Opted Out of the Medicare Program.” An even better response would be, “No, it is illegal unless you have Opted Out of the Medicare program as specified in the 1997 Balanced Budget Act.” Still better yet would be if you also offered the link to the 1997 Balanced Budget Act. The best reply would be if you also quoted the verbiage from the link. All of the examples above are correct, but they vary greatly in the level of confidence that they will *(continued on next page)*

instill among your clients.

What I am getting at is we all need to back up our statements to clients with facts from authoritative sources. If we fail to do this, we are expressing our opinion. And even the best of the billers within the HBMA (the ones we all respect) can and do express opinion at times. And those opinions will not hold up in court or prevent your client from paying back money in extreme circumstances. Often, opinions can be completely accurate.

This brings us to another dilemma. What sources are authoritative and which sources are opinionated? The key is going right to the source. Some authoritative sources are the Centers for Medicare and Medicaid Services (CMS), the Federal Register, federal law, state law, and the Office of the Inspector General (OIG). You might be surprised (or maybe not) that your local Medicare MAC is often not an authoritative source. MAC often misinterprets CMS Policy.

The hard part is taking the time to find that source material. We are all so very busy just getting our day-to-day work done and running our billing businesses, that it is easy to give the quick reply. The HBMA message boards are a great source for assistance. Just keep in mind that many of the replies are opinions and not facts. However, look at those replies that give a web link or a notation of

the CMS guidelines or quote the local or federal laws. Your clients should expect the same from you, as you expect from the HBMA. HBMA's Ethics and Compliance Committee has assembled a variety of links and documents that are authoritative sources for answers on a variety of compliance topics. These are available on HBMA's website [www.hbma.org/news/compliance](http://www.hbma.org/news/compliance).

Similarly, the OIG has famously expressed the *opinion* that it dislikes billing contracts based on a percentage of collections because the OIG believes that such arrangements create "improper incentives to engage in bad behavior that increases payments to providers." However, the authoritative source is CMS, which has always found percentage fees permissible, as long as providers' payments are deposited into an account over which the billing company has no (signature) control. This illustrates the point that even government officials engage in offering opinions and, in this example, many well-meaning attorneys misinterpret that opinion as authoritative.

Local sources for authoritative answers about Medicaid and commercial insurers doing business in your state are also needed, but often harder to find. In addition, many medical specialties are subject to complex coverage and/or coding rules and these are often changed — not always in logical time-frames. These frequent and sometimes contradictory changes

in official rules add another layer of complexity to finding “authoritative” answers, since the answer is often time-sensitive. “Yes, Dr. Jones, that was the rule until March 9th, but Medicare changed it to non-covered, effective March 10th.”

Beyond garden-variety rumors and urban legends, additional confusion is created when the government publishes *proposed* changes in the Federal Register (which is otherwise an absolute authoritative source) as Notice of Proposed Rule Making (NPRMs) or as Interim Final Rule (IFRs). As word spreads about what the government proposes, the “proposal” part is often lost and the details are misconstrued to be “official.” In some cases, an NPRM is published and the Final Rule is not published for several years (as happened with some of the HIPAA changes), leaving the original, unchanged rules in effect. We have to keep track of this on behalf of our clients.

In some cases, an organization (federal agency, professional organization or other entity) may have official jurisdiction over

a certain aspect of Medicare or Medicaid operations. When answers are conflicting, the entity with the highest “precedence” is the source of final answers, particularly when there are conflicting answers.

The next time a client poses a question, take some time to reply. In many cases you know the answer already (I am as guilty as anyone at this). However, by finding the official CMS policy, or the exact state law, etc. that applies, you will be perceived as a knowledgeable and professional biller who knows the industry (an expert in the field of healthcare and medical billing and consulting). Your opinion then becomes credible because it is based upon facts that can be verified. ■



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## Authoritative Resources In Order of Precedence

*Compiled by Bob Burleigh, CHMBE*

**Federal Law** (also known as “CFR” — Code of Federal Legislation)

- As enacted by Congress and signed into law by the President, federal law is the most authoritative source of instructions and answers, subject to clarification and/or interpretation by a federal court.

**Federal Register**

- Laws (see above) and regulations are published in the Federal Register, which functions as the Executive and Legislative branches’ official public “bulletin board.”

**Centers for Medicare and Medicaid (CMS)**

- CMS issues instructions and directives via a variety of official communications:
  - a. Bulletins
  - b. Transmittals
  - c. Internet Only Manual (IOM)
  - d. Carrier (MAC) Manuals
  - e. National Coverage Determinations (NCDs)
  - f. Local Coverage Determinations (LCDs)

**OIG** (the Department of Health and Human Services (DHHS) Office of the Inspector General)

- The OIG’s principle function is to investigate and enforce

the applicable laws and regulations. That is in contrast to officially interpreting laws and regulations or issuing official rules. However, the OIG’s enforcement initiatives often produce outcomes — particularly those that result in a court decision that constitutes a legal precedent. In almost all cases, a legal precedent is immediately the highest source of “authoritative” determination inasmuch as it has been tested by a federal court.

**Medicare MACs (and Carriers)**

- MACs and carriers have always had a limited amount of regulatory flexibility, which allows them to set local policy. In order to do that, the MAC/carrier must provide a published edition of any new policy or interpretation; without a published source, there is not an authoritative answer.
- MAC/Carrier Medical Directors do have some leeway when interpreting coding or claims policies.

**TriCare**

- <http://manuals.tricare.osd.mil/index.cfm?fuseaction=TMAManuals.DisplayManualSeriesInfo&ManualSeries=REIMBRSMT>

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### Workers' Compensation

- Each state has its own unique program and laws regulating Workers' Compensation coverage, claims, employee rights and responsibilities, employer rights and responsibilities, claims appeals, etc. The one certainty is that there are 50 separate answers to every question since no two states regulate Workers' Compensation the same way. Most official state websites (often the Department of Labor or the equivalent) will provide legal information about claims, payment rates (when they are regulated – not all states do), appeal mechanisms, etc.

### Auto Insurance

- Like Workers Compensation, each state has its own unique program and laws regulating auto insurance coverage, claims, driver/passenger rights and responsibilities, injured parties' rights and responsibilities, claims appeals, etc. The one certainty is that there are 50 separate answers to every question since no two states regulate auto insurance the same way. Most official state websites (often the Department of Motor Vehicles (DMV) will provide legal information about claims, payment rates (when they are regulated – not all states do), appeal mechanisms, etc.

### Commercial Insurance and PPOs

- In every state, there is an Insurance Commissioner (or similar title) responsible for oversight and regulation of health insurance programs. The website [www.naic.org](http://www.naic.org) has an interactive map of the U.S. with links to each state's insurance agency.

### HMOs

- In some states the Insurance Commissioner has jurisdiction over HMOs and other "managed care" plans, but in some states, such as California, there is a separate agency.

### Coding

- There are more opinions about CPT, HCPCS and ICD-9 CM coding than there are codes. Finding AUTHORITATIVE sources for answers is often confusing, however:
  - The American Medical Association is the owner and

publisher of the CPT codes. ONLY the AMA's published materials represent authoritative answers on the meaning and application of their codes. The AMA's CPT manual, their CPT ASSISTANT and any purchased interpretations issued by AMA staff on AMA letterhead are authoritative. While many insurers and government programs may issue their own pronouncements about CPT codes, their statements are about coverage, not coding. CMS' recent announcements about Consultation Codes represent an authoritative description of CMS' coverage policy, but have no effect on CPT coding.

- CMS is the official source of information and answers regarding HCPCS codes as they apply to Medicare. These will be found on the CMS website. Some MACs and Carriers continue to issue and/or maintain so-called Level III HCPCS (local) codes and they would be the authoritative source for use of local codes, typically on the MAC's or Carrier's website and/or in their official Provider Bulletins.
- If a state Medicaid program has adopted usage of HCPCS codes, they would be the authoritative resource for HCPCS coding rules, but only as they apply to that state's Medicaid program.
- The Coding Clinic (a division of the American Hospital Association) is the official source of information about ICD-9 CM diagnosis coding. The ICD-9 CM coding system is a copyrighted product of the World Health Organization, which has delegated official interpretation to The Coding Clinic. Once again, while many insurers and government programs may issue their own pronouncements about ICD-9 CM codes, their statements are about coverage, not coding.
- Coding-oriented trade associations such as AHIMA, AAPC, ACMCS, RCCB and others are reliable sources for opinions, but may not be a reliable source for a specific and authoritative citation of coding rules.
- There are a variety of coding-related and often specialty-specific newsletters, bulletins, "alerts," etc. that regularly publish specific advice about coding. Some of these citations may be based on an authoritative source, but they are not, themselves, an authoritative source.

*This list of resources has been compiled by Bob Burleigh, CHMBE.*