Risk Management:

When Marital Therapy Isn't

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At a recent workshop someone in attendance asked if the following was acceptable:

A couple had been referred to a psychologist for marital therapy. Discovering that their insurance policy did not specifically cover marital therapy, the psychologist decided to identify one member of the dyad as the patient, give that person a DSM diagnosis (which kind of fit) and submit claims to their insurance company under the CPT Code 90847, Family Psychotherapy with Patient Present. The notes from the couple's therapy sessions were then entered into the identified patient's chart, which included the information from both parties. In this way third party reimbursement was obtained for the couple's therapy sessions.

The above scenario raises a number of serious professional issues and problems. The first of these deals with the benefits that an insurance company provides to those they cover. If the insurance company does not cover marital therapy, finding a creative way to bill for such services in a fashion that brings about third party reimbursement can be quite dangerous for a variety of reasons.

Some carriers, such as Tri Care, are very clear that they see this procedure as a "common type of fraud and abuse" that falls under the concept of "creative billing" which, to this national carrier, "includes substituting covered diagnosis or procedure codes for a non-covered TRICARE procedure."

Therefore, if you are audited, which is increasingly likely in this day and age, and if the carrier determines that you were actually being reimbursed for a non-covered service, you might find yourself in the position of having to reimburse the fees paid by the insurance company from your "creative billing" statements. This can be very serious in light of the fact that there is a V Code DSM diagnosis in the DSM-IV-TR, Partner Relational Problem, (V61.10) that is designed to address cases where "the focus of clinical attention is a pattern of interaction between spouses or partners characterized by negative communication…" This is arguably the more appropriate code for this type of case (DSM-IV-TR, p 306) if, in fact, the treatment is for marital problems. To make matters only worse, the audit could result in the worst case scenario, which is that the carrier may see this conduct as insurance fraud and take formal action against you for professional misconduct.

Second, finding a reimbursable diagnosis that fits a case of marital therapy or making marital therapy fit into another CPT code could also be seen as up coding and insurance fraud. Because the diagnosis fits the client is not the issue because it is arguably the focus and purpose of the treatment and the treatment plan that is important. Thus, if you are treating the couple but identifying one individual as a patient/client for reimbursement purposes, you arguably have given a mental health diagnosis to an individual unnecessarily and have misused the purpose of the CPT code.

This is something that could have serious, long term implication. In the spirit of those to might try to find a diagnosis that fits, it would be well to remember that there really is no such thing as a "slightly misleading diagnosis" nor is there room in the standard of care for conduct that is anything other than adequate and accurate.

Third, the administrative shift of the focus of treatment to an individual can create serious problems with regard to access to the record and have impact upon authorizations for the record to be released. While martial records almost always require joint authorization to be released (a fact that should be in the informed consent form), identifying one member as a patient could be seen as shifting that very valuable feature of marital therapy to an individual.

This is especially significant because marital therapy does not always work and, if this is the outcome, access to the record as part of legal action could be quite confusing under this creative design. If the record is truly a marital record, this access is clear, both must consent. However, if one had identified a single party as the patient/client and the other as a collateral, then that single individual is the only person required to have the record released and the other individual may have lost the control of the record.

If a court were to rule that the creative billing caused one party to lose control of the record, such conduct could be seen by others as violation of professional standards and the duty owed to a patient/client, possibly exposing the psychologist to legal action.

When conducting marital or couple's therapy, psychologists would be well advised to check to see if the patient's insurance carrier provides such coverage. If the insurance carrier does not reimburse for this type of therapy under the appropriate diagnostic code, martial therapy is not covered by the policy. To find a creative way to obtain reimbursement through the manipulation of both the insurance policy and the focus of therapy is very unwise.

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