

PUT A PIN IN IT

Getting a Grip on Medical Provider Fraud Costs and Acupuncture Claims

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It is no surprise that recent industry trends evidence medical providers partnering with specialty groups of other disciplines. Particularly, this is most prominent between the partnership of chiropractors and acupuncturists. The partnering between the two disciplines has a direct impact on medical severity which ultimately increases the PIP payout and likewise has some monetary effect on third party litigation.

Over the last several years, there have been partnership pockets in different geographic locations throughout the country. New Jersey, for example, is one such state where this partnership is evident. Despite the chatter that acupuncture is simply a “PIP problem,” the fact remains that any form of fraudulent medical treatment is an industry-wide concern ultimately affecting both sides of the house. An understanding of acupuncture treatments can help claims professionals evaluate and investigate such claims for payment or merit.

Understanding the Examination

Generally, acupuncturists tend to bill the same initial evaluation and management codes as other practitioners (CPT 99201 to 99205); however, an initial acupuncture evaluation contains unique components that are not performed by other medical providers.

For example, an examination of the tongue occurs to determine the color, body, coating, and surface irregularities. The tongue is

believed to reflect the basic condition and underlying problem of a patient at the time of examination. Having a patient stick out their tongue for examination is unique to acupuncture and is a component of an examination that a patient should be able to remember during questioning, when giving a recorded statement or during an Examination Under Oath (EUO).

Additionally, the radial pulse is examined to determine the overall condition of a patient. A radial examination performed by an acupuncturist is different than other medical providers as three separate regions are examined on each wrist and these six regions are examined at different levels – superficial (pressed lightly), middle (pressed deeper) and deep (highest level of pressure). As the radial examination is longer and involves different levels of pressure, it is another component of the examination that should be memorable to a patient.

New Jersey has taken unique steps to help regulate the conduct of acupuncturists and other states are watching and may soon follow. In New Jersey, the risks of, and alternatives to, acupuncture must be reviewed with the patient before commencing treatment, and evidenced via a signed writing. N.J.A.C. 13:35-9.11(b).

This “informed consent” goes beyond the patient signing a form indicating that he or she was informed of the risks of acupuncture

treatment, but rather must include an explanation by the acupuncturist to the patient disclosing the specific risks associated with treatment. Some of the rarer risks associated with acupuncture include nerve damage, lung puncture, organ puncture and spontaneous miscarriage.

In New Jersey, if an informed consent form is not signed by a patient before acupuncture treatment commences, or if the signed form insufficiently sets forth the applicable risks and alternatives, no benefits are owed. Moreover, patient testimony indicating that risks associated with acupuncture were not verbally explained will often support a denial, even where an otherwise acceptable form was executed.

While many patients initially testify during an EUO that they were informed of the risks of acupuncture, when they are specifically questioned about risks such as organ puncture or miscarriage, they often advise that they were never told of such risks and, had they been, they may not have chosen to receive the acupuncture treatment. Despite this type of protection being present in New Jersey, it is not a universal understanding.

Another salient point on investigating informed consent is whether or not the consent form provided to the patient was written in the patient's primary language and whether the patient was actually able to read it. Many acupuncturists will have patients signed informed consent forms that are written in English, when the patients may not be able to read English. This does not amount to obtaining *informed* consent. The courts consider this a patient safety issue, and place special emphasis on this factor.

Common Claims

Generally speaking, acupuncture involves the insertion of extremely thin needles through the skin at strategic points on the body to treat pain. There are a number of common

treatments that acupuncturists perform, that often give rise to claims. These common treatments may include:

- Electro-acupuncture, in which acupuncture needles are attached via wires to a device that produces constant electrical pulses.
- Infrared therapy, whereby infrared lights are placed directly over the body, typically while acupuncture needles are inserted into the body, emitting light which penetrates the skin and is absorbed into the tissue. The infrared light causes a warming sensation on the patient's body. As previously discussed, this procedure is one that a patient should remember due to the equipment used and sensation felt on the body.
- Cupping is another popular form of acupuncture, in which a glass cup is warmed using a flammable substance to create a vacuum. The cup is then turned upside-down onto a specific area of the skin, which draws the skin up, and is believed to stimulate blood flow and create a healing effect upon the patient. The skin feels like it is being sucked from the body. Cupping leaves large bright red to dark purple marks on the body. These marks are readily noticeable and obvious. While a patient may or may not feel pain from this modality, this again is a procedure that patients should readily recall.

Claims Investigation Red Flag #1: Inflated Billing

Acupuncturists frequently bill for the rendition of services on a single office visit via multiple CPT codes.

Specifically, billing under CPT 97810 (acupuncture, initial 15 minutes) and 97811 (acupuncture, each additional 15 minutes, with

re-insertion of needles) or 97813 (acupuncture with electric stimulation, initial 15 minutes) and 97814 (acupuncture with electric stimulation, each additional 15 minutes, and re-insertion of needles) is common. The submission of billing under CPT 97811 and CPT 97814 requires an additional 15 minutes (30 minutes total) of one-on-one patient contact, as well as “re-insertion of needles.”

Only one unit of the initial code can be billed, while any number of units may be billed for the re-insertion codes. However, excess billing of units, four or more for any session, should lead to the acupuncturist’s records being questioned and investigated as this is indicative of inflated billing. It’s important to also keep in mind that acupuncture needles are inherent to the acupuncture service and should not be reimbursable outside of the acupuncture codes billed.

Red Flag #2: One-on-One Patient Contact

The time requirement under the code is specific to one-on-one patient contact. As such, the time that an acupuncturist is not actively involved in providing a medically necessary activity in the performance of acupuncture is not counted toward the time increment of the codes. The duration of acupuncture needles in the body also does not count toward the time increment. For example, tasks such as assessing and examining the patient, locating acupuncture points, prepping the patient and inserting and removing the needles is considered one-on-one contact. If the acupuncturist remains in the room with the patient outside of performing those services, this would not support one-on-one contact.

If no time is documented in a patient’s treatment notes, there is no justification to bill any of the acupuncture codes. If an acupuncturist’s treatment records are illegible, incomplete or unclear and do not substantiate the treatment bill, this is indicative of services being billed, but not rendered.

There are instances where it is beneficial to have a code review expert analyze a medical provider’s treatment records against his or her billing records, to compare and determine whether the records support the billing without having to take a statement from the patient.

Red Flag #3: Reinsertion of Needles

Additionally, it’s important to note that an acupuncturist cannot bill add-on codes unless there is “reinsertion of needles.” The American Medical Association has provided vignettes to provide clinical examples of what re-insertion requires. Reinsertion does not mean that a needle is removed from the skin and then inserted back into the body because such action would violate clean needle standards of the Occupational Safety and Health Administration (OSHA) guidelines. Reinsertion requires that the original needles be removed from a patient’s skin and discarded, followed by the insertion of new needles into additional points in the skin. Reinsertion also does not mean that the needles that already placed in the skin are manipulated or adjusted.

Interestingly, acupuncture patients commonly testify that treatment lasted no longer than 15 minutes in duration and that “re-insertion” of needles never occurred. Questions during recorded statements and EUOs must focus on details regarding what the acupuncturist performed during each session and for how long. Where the acupuncturist was while needles were inserted into the skin and what they were doing is imperative in determining whether the time and re-insertion requirements were satisfied to accurately report CPT 97811 or 97814. As such, a fact specific inquiry is recommended.

Given the surging popularity in acupuncture treatments and the increasingly common partnerships between chiropractors and acupuncturists, the probability for human error or fraud in these environments is high. The prudent claims professional will take note of these trends in an effort to accurately adjust

these claims. While New Jersey has a sophisticated administrative code governing the conduct of acupuncturists, other states are not so regulated. In those states, we should look to subject matter experts and, more importantly, our policy terms and conditions, to effectively manage the risk that lies ahead.



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