Deciphering the “Black Box”: Compliance and the Operating Room, Part II

Tips for Ensuring Compliance When You Have Overlapping Surgeries

To most observers outside of the operating room, the delivery of surgical care seems very straightforward. A patient has a specific problem; the surgeon identifies the problem and proceeds with the plan of care that involves a surgical procedure, which has a beginning, middle, and end. At the conclusion of the operation, the patient moves from the operating room to the recovery room in a seamless fashion. For the non-teaching surgeon, this rather straightforward paradigm applies. Every incision made, organ manipulated, and vessel coagulated are performed by the principle operator, the attending surgeon.

In contrast, special and unique compliance issues arise in the operating rooms of academic health centers and teaching hospitals, which are governed by Chapter 12 of the Physician Teaching Rules of the Medicare Claims Processing Manual. The attending or teaching surgeon has a team of residents and fellows to assist in the orchestration of the steps of the surgical procedure. This allows the surgeon to act in the best interest of the patient having surgery by directing and performing the key and critical portions of the procedures as well as providing and training the residents and fellows with the necessary experience to become the surgeons of the next generation. Furthermore, it allows a greater degree of freedom for the teaching surgeon to conduct “overlapping surgeries” to transpire in the same setting at the same time.

Obviously, two patients cannot have surgery at concurrent times; however, in the teaching setting, two teams can begin and end a procedure so that the teaching surgeon can be available to perform the key and critical portions of each procedure. Strict rules apply to the timing of these events, and the teaching surgeon has the respon-
Physician Compliance

sibility to document precisely what the key portions of the procedure are and that he or she was present for them.

The term “overlapping” allows for the surgical procedures to be scheduled and staggered in such a way that one procedure does not have to conclude before the next begins as long as there has been completion of the key portion of one procedure prior to the commencement of the next procedure. This system allows for the teaching surgeon to instruct his team of residents and fellows so that they will gain the knowledge, experience, and tactile skills necessary to complete their surgical training as safe and qualified surgeons.

It also allows the teaching surgeon, whose skills are likely specialized and in demand, the ability to expand services to a greater number of patients than if procedures could not overlap. The rules that govern the overlapping surgeries allow for protection of the patient so that the teaching surgeon is not over-extended in a fashion that does not allow for direct participation and oversight for the key portion of each case.

Overlapping procedures can be a distinct challenge for the compliance professional without adequate policies and procedures in place to appropriately account for the activities and involvement of the teaching surgeon and his or her fellows and residents. The first step for the compliance professional working in an academic health center or teaching hospital is to understand the guidelines that apply to teaching surgeons and the compliance requirements for conducting billable, overlapping surgical procedures.

Breaking down the requirements into three key elements facilitates an understanding of the physician teaching rules related to overlapping surgery. These three key elements include: 1) presence of the teaching surgeon and documentation thereof; 2) fulfilling the backup surgeon requirement; and 3) prohibition on billing for more than two concurrent surgical procedures by the teaching physician.

The first key element that must be accounted for when two overlapping surgeries occur is the presence of the surgeon and his or her documentation requirements. According to the Medicare Claims Processing Manual, the first key element of compliance for overlapping surgeries is the presence of the teaching surgeon. The manual states, “In order to bill Medicare for two over-lapping surgeries, the teaching surgeon must be present during the critical or key portions of the surgery. Therefore, the critical or key portions may not take place at the same time. When all key portions of the initial procedure have been completed, the teaching surgeon must personally document in the medical record that he/she was physically present during the critical or key portion(s) of both procedures.”

This guidance is extremely important for two reasons. First, it sets the stage for the physical presence of the teaching surgeon while the critical or key portions of each of the surgical procedures occur. Second, it outlines the specific documentation requirements that the teaching surgeon must satisfy.

The Medicare Claims Processing Manual further states, “When a teaching physician is not present during non-critical or non-key portions of the procedure and is participating in another surgical procedure, he/she must arrange for another qualified surgeon to immediately assist the resident in the other case should the need arise.” Here, the teaching surgeon must identify a qualified surgical colleague to serve as a backup surgeon should the resident or fellow require help or run into an emergency while the teaching physician is engaged in the critical or key portion of the other case.

First and foremost, this step is necessary to ensure the safety of the patient; however, failure to identify the name of the backup surgeon who will be immediately available, if needed, prevents the case from being billed. This backup surgeon cannot be involved with his or her own surgical procedures at the time of serving as backup surgeon.

The third and final key element to compliance with overlapping surgery is the prohibition of billing for more than two concurrent surgical procedures. The Medicare
Claims Processing Manual states, “In the case of three concurrent surgical procedures, the role of the teaching surgeon (but not anesthesiologist) in each of the cases is classified as a supervisory service to the hospital rather than a physician service to an individual patient and is not payable under the physician fee schedule.”

Compliance with the billing requirements for overlapping surgery relies heavily on the documentation of the teaching surgeon. Compliance professionals working in an academic health center or teaching hospital setting first should begin reviewing documentation requirements for their facility with regard to performing overlapping surgical procedures. Specifically, they should determine if the overlapping surgery policies and procedures are sufficient to facilitate compliance at their respective institutions.

Second, the compliance professional should review teaching surgeons’ documentation to determine if the surgeon states that he or she was present for the key portion(s) or critical portion(s) of the surgical procedure. Third, the compliance professional should review documentation to determine if the teaching surgeon has identified and documented, by name, the qualified backup surgeon and if this surgeon was immediately available to assist the resident or fellow in the other operating room, if required.

Finally, you must have a process in place to identify situations in which more than two overlapping surgeries have been scheduled or have occurred. In the former case, the compliance officer in conjunction with the chief of the surgical service should not allow the third overlapping case to begin until one of the other two cases has been completed unless there is prior intent that no billing for this procedure will occur. In the latter case, billing for the third case should be suspended.

In the ideal situation, policies and procedures should be developed to identify overlapping surgery problems prior to occurrence. Such policies should require identification of the backup surgeon at the time that overlapping surgical procedures are scheduled and require that the teaching physician update the operating room scheduling office prior to commencing with the first case if changes to the backup surgeon have occurred since the case was scheduled.

This final step is crucial to ensure that the operating room has the most recent information available regarding the backup surgeon, should it be needed. While the situation of three or more overlapping surgical procedures being conducted concurrently is not likely to happen, having a mechanism in place to capture these situations is important. Finally, the compliance officer should assist the billing office with developing a mechanism to identify surgical start and stop times for each surgeon that has performed overlapping surgical cases.

Endnotes:
1. Medicare Claims Processing Manual, Chapter 12 – Physicians/Nonphysician Practitioners, Section 100.1.2 (A)(2).