

Press Release

FOR IMMEDIATE RELEASE

November 11, 2011

On November 7, 2011, U.S. Administrative Law Judge Robert Fisher (the "ALJ") of the Office of Medicare Hearings and Appeals, directed Medicare to process all of a Massachusetts podiatrist's claims for partial nail avulsions which it had previously denied. This important decision, which is now in full force and effect, clarifies the proper billing of CPT 11730, the eighth most utilized code in practice of podiatry.

As the basis for its inaccurate determination that the podiatrist had improperly billed National Heritage Insurance Company, (NHIC) the Medicare Contractor which paid the claims submitted for CPT 11730, N.E. Benefit Integrity Support Center/Safeguard Services, L.L.C., (the Program Safeguard Contractor [PSC]) and First Coast Service Options, (the Qualified Independent Contractor [QIC]) mutually contended "... the medical record documentation submitted does not describe the services billed. For partial avulsion, the cut is straight through the nail matrix, it is not a clip outside of the nail corners. For a total nail avulsion, the total nail is avulsed from the matrix, and involves the entire nail plate. These procedures require local anesthesia (which is not documented) and an operative report is usually generated." In this case, the findings of the PSC and the QIC were inconsistent with the podiatrists actual records which fully documented billable nail avulsions in conjunction with the use of local anesthesia. Interesting, is the fact that the use of any anesthesia is not required according to NHIC.

On behalf of the podiatrist, Attorney Robert Griffith of Gargiulo/Rudnick, L.L.P. argued that Local Coverage Determination (LCD) L3153, issued by NHIC, does not require a cut "straight through the nail matrix," and instead only requires removing part or all of the toenail "through at least half the length of the nail." Attorney Griffith also argued that, the description of an avulsion "from distal to proximal along the entire tibial border of the tibial hallux nail," was a more medically precise description of "a cut straight through the nail matrix and fulfilled Medicare's requirement. The ALJ agreed.

Addressing the PSC's and QIC's claims that only injected anesthesia qualifies as a local anesthesia, Attorney Griffith demonstrated through numerous citations to existing medical literature that in fact, topical anesthesia is one type of local anesthesia, and is often appropriate for use with elderly patients. He also contended that NHIC has not and does not require those billing CPT 11730 to use injected anesthesia or to submit a separate operative report. The ALJ agreed, finding that topical anesthesia is not required, but is appropriate under CPT 11730, and that a separate operative report is not required; progress notes describing the procedure are sufficient.

The ALJ issued a fully favorable decision for the podiatrist and found that the services the podiatrist provided were so clearly covered under Medicare that a hearing was unnecessary. As a result, the podiatrist is not responsible for the \$103,323.92 calculated in **extrapolated** overpayments, Medicare must reimburse the podiatrist for all services billed under CPT 11730, and refund any amounts collected from the podiatrist.

Podiatrist's subject to similar audits concerning CPT 11730 may benefits from the arguments and documents submitted in this case and the ALJ's analysis. For further information contact:

Robert A. Griffith, Esq.
Gargiulo/Rudnick
One Washington Mall
Boston, MA 02108
(617) 742-3833
rgriff@grglaw.com