

Case on misuse of CPT code to hide administrative costs can proceed

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A recent federal appeals court opinion helps ensure that health care companies don't misuse the AMA Current Professional Terminology (CPT[®]) code set. The decision could help prevent misconduct that can undermine the public's confidence in those who provide health care and deter a practice that could make it even more difficult to agree on health care system reform.

The lawsuit accuses Aetna Inc., Aetna Life Insurance Co. and Optumhealth Care Solutions Inc. of misusing CPT code 97039 to pass on administrative charges under the guise of medical care. An amicus brief the Litigation Center of the American Medical Association and State Medical Societies filed with several state medical organizations told the court that the code set is meant to be used for procedures or services that are actually delivered to a patient, not to describe administrative costs in the medical record.

The brief helped guide the 4th U.S. Circuit Court of Appeals in its June decision in *Peters v. Aetna* that in part overturns a district court ruling that would have prevented the lawsuit from going forward.

"In their brief, amici discuss that the American Medical Association is the author and copyright holder of the CPT code set book. This code set is critical as a 'definitive resource to ensure that people and organizations are using the same language when referring to health care services,'" the court writes, quoting the AMA Litigation Center and state medical organizations' brief.

"'Critically, CPT codes *only* describe health care procedures and services.' Thus, a reasonable factfinder could plausibly infer that Aetna as one of the 'largest health care companies in the United States' and CPT licensee with the American Medical Association misused the 'dummy' CPT code because 'CPT does not have 'catch-all' or 'miscellaneous' codes that can serve as a label for whatever ... [Aetna] elect[s] to charge a member and their plan.'"

The court concluded that Sandra Peters produced "sufficient evidence to create a genuine issue of

material fact as to whether Aetna utilized a dummy CPT code in direct contravention of the recognized purpose of the CPT code and thereby breached its fiduciary duty.”

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.

Defining a care provider

Further, the AMA Litigation Center and state medical organizations’ brief aided the court in determining that network providers are the actual health care providers allowed to use CPT codes to bill, not companies such as Optum that contracted with Aetna to provide chiropractic and physical therapy services to the Aetna plan’s participants.

“The interpretation is bolstered by the brief of amici, the American Medical Association, North Carolina Medical Society, Maryland State Medical Society, South Carolina Medical Association and Medical Society of Virginia,” the appellate judges write. Quoting the amicus brief, they say, “In their brief, amici explain that ‘within the health care industry, a ‘provider’ is one who performs a service (such as a physician) or who maintains a health care facility (such as a hospital.)’ Accordingly, a reasonable factfinder could conclude that Optum was simply not a Network Provider under the plan. ‘Mere contracting with those who perform services or maintain facilities is not the provision of health care, and companies, such as Optum, who maintain these contracts are not deemed the ‘provider’ of the service (even though they may provide the network.)”

The AMA is the author and copyright holder of CPT. A panel of 17 medical and allied health professionals representing a broad range of the health care industry, including health insurance companies and dedicated staff support from the AMA maintain and update the CPT code set.