
Medicaid Dental Audits of Intravenous (IV) Sedation Services.

(June 16, 2017): Under the Social Security Act, states are required to operate a Medicaid Fraud Control Unit (MFCU).[1] Each MFCU is tasked with the investigation and prosecution (under state law) of Medicaid providers who engage in fraud or patient abuse. Last year was rough for dentists participating in the Medicaid program. As set out in the "[Medicaid Fraud Control Units Fiscal Year 2016 Annual Report](#)," there were **more open fraud investigations against dentists** than against any other type of licensed practitioner providing services to Medicaid beneficiaries. Additionally, the amount of money recovered by MFCUs in connection with Medicaid dental fraud cases last fiscal year far exceeds the recoveries made with other types of licensed Medicaid practitioners. What does this mean for your practice? As a participating dental provider in the Medicaid program, it is essential that you ensure that the services you bill to Medicaid fully qualify for coverage and payment. This article examines one of the more common problem areas that have been identified by state MFCUs -- the billing of intravenous (IV) sedation services by dentists to the Medicaid program.

I. Law Enforcement is Actively Reviewing IV Sedation Services Billed to Medicaid:

The billing of dental IV sedation services to the Medicaid program is a favorite target of both state and federal auditors and investigators. Now, more than ever before, it is essential that your practice have safeguards in place to assist your dentists in determining the proper level of sedation to be administered. Moreover, if you believe that IV sedation is needed, have you properly documented why this intensive level of sedation is medically necessary? Have you documented why less intensive levels of sedation would not meet the needs of a particular patient? This article examines a number of the issues to be considered when administering and billing for IV sedation to the Medicaid program

II. Levels of Sedation Used in Dentistry:

It is important to keep in mind that regardless of which level of sedation is ultimately administered, the provider will normally still use a local anesthetic to numb the area of the mouth where the dental procedure is being conducted. While this article is focused on issues arising when billing for IV sedation services, it is helpful to first outline the various levels of sedation that a dentist may choose from:

- **Minimal Sedation.** At this level, a patient is normally sedated nitrous oxide (commonly referred to as "laughing gas"). The nitrous oxide is administered the nitrous oxide through a mask placed over the patient's nose. This minimally sedates the patient, who remains awake but is relaxed throughout the procedure.
- **Moderate Sedation.** Often referred to as "conscious sedation," this level of sedation can be achieved through the taking of a pill, such as Halcion. Although the pill will make the patient drowsy, the patient remains awake. Most states require that dentists offering moderate sedation undergo additional training and licensed or certified by their state licensing board.
- **Deep Sedation (IV Sedation).** IV sedation, often achieved through a vein in the hand, is commonly used to place a patient under this level of consciousness. IV sedation can be administered by an anesthesiologist or a properly trained and licensed dental professional (such as an oral surgeon).
- **General Anesthesia.** A dental patient placed under general anesthesia is fully unconscious during the procedure conducted. This is the deepest level of sedation dentistry. It is usually performed in a hospital surgical environment by an anesthesiologist or a highly trained oral or maxillofacial surgeon.

III. Medical Necessity Requirements When Administering Dental Sedation:

The medical necessity, coverage, documentation and payment rules applicable to dental sedation vary from one state to another. For instance, as a general rule, if your dental sedation claims are audited by Medicaid, the reviewer will attempt to assess whether level of sedation you administered was medically necessary and appropriate in each particular case. It is therefore essential that you ensure that you ensure that you are properly trained, certified and / or licensed by the state to provide IV sedation or general anesthesia services prior to administering that level of care. Additionally, keep in mind that Medicaid's documentation requirements, coverage and payment rules frequently change. If you intend to provide this level of dental sedation, you need to periodically review the Medicaid Provider Handbook for your state to ensure that your efforts fully comply with applicable requirements.

IV. Recent Problems Identified When Auditing IV Sedation Services:

Unfortunately, over the past year, state law enforcement personnel have identified a number of ways that IV sedation dental services have been improperly billed to Medicaid. Risk areas that will likely be examined if your IV sedation claims billed to Medicaid are audited include the following:

Risk Area #1: Billing for IV sedation when the level of sedation actually administered was conscious sedation. IV sedation is typically reimbursed at a much higher rate than either moderate sedation (conscious sedation) or minimal sedation (nitrous oxide).

Risk Area #2: Billing for IV sedation on the basis that it was necessary for emergency medical care when, in fact, no emergency conditions were present. If the medical necessity of IV sedation is supposed to be based on the fact that it was needed for emergency dental care services, an auditor is likely to first look at where the services were provided. Some states require that IV sedation must be administered in a hospital or a qualified ambulatory surgical center. To the extent that your state is more flexible on the site of administration, it is still very important that you document the facts and circumstances which constitute the medically necessary emergency conditions that required the use of IV sedation..

Risk Area #3: Billing for IV sedation procedures without justifying in writing, that the service is required for a patient who is uncontrollable under local anesthesia alone. Most state have identified a number of cognitive and behavioral conditions that make it difficult for a patient to be sedated with only minimal or moderate sedation. If you are administering IV sedation to a patient based on the fact that a patient is uncontrollable, we strongly recommend that you fully document the reasons that this level of sedation is medically necessary.

Risk Area #4: Billing Medicaid for IV sedation services at a higher rate for [IV sedation] provided to a Medicaid recipient than dentist charged to other payors. A number of states have This particular state has broad statutory provisions that restrict a provider from charging a higher rate for any unit of service provided to a Medicaid recipient than the provider charges others (with the exception of what is billed to Medicare).

Risk Area #5: Submitting a claim for oral sedation when in fact the patient was administered IV sedation prior to the effective date that the dentist was licensed to perform sedation." Most states require that dentists have specialized training and be certified or specifically licensed by the state to administer IV sedation or general anesthesia. In this particular case, it was alleged that the dentist purposefully miscoded the level of sedation administered to hide the fact that he / she was not yet licensed by the state to administer IV sedation.

Risk Area #6: Administering and billing Medicaid for IV sedation on dental patients that were merely receiving teeth cleaning services and did not otherwise qualify for this level of dental

sedation. During an audit, if you have been found to have administered and billed for IV sedation when you are merely cleaning a patient's teeth, the government will undoubtedly argue that these services were not medically necessary or required. IV sedation cannot be provided to a patient merely because the patient has requested it or because it would make the dentist's job easier.

Risk Area #7: Administering and billing for IV sedation services that were performed in connection with underlying procedures that Medicaid does not cover." If a dentist performs care and treatment procedures that do not qualify for coverage and payment under Medicaid, the dentist cannot administer and bill Medicaid for associated IV sedation services, even though the non-covered underlying services may have justified the use of IV sedation.

Risk Area #8: Billing for more time spent administering IV sedation services than the actual time that the recipient spent under IV sedation OR in excess of the time medically necessary for the underlying procedure." Even if the administration of IV sedation may have been medically necessary, you still cannot bill Medicaid for more time than the patient was actually sedated.

Risk Area #9: The defendants were alleged to have backdated and billed Medicaid for IV sedation services on the basis that the underlying facts qualified as "emergent," when, in fact, the definition of what constitutes a qualifying emergent situation changed. Improperly backdating medical records in an effort to qualify for coverage under the old rules, is both a violation of your state Dental Practice Act and is likely a criminal offense under both state and federal law. Don't do it!

Risk Issue #10: Failure to conform to the minimum professional standards of dentistry. For example, in one recent case, a dentist was alleged to have engaged in the performance of patient care (regardless of whether actual injury to the patient occurred), that did not conform to minimum professional standards of dentistry. More specifically, the dentist was alleged to have performed a dental extraction procedure on a sedated patient while riding a hoverboard. The dentist also allegedly filmed the procedure and distributed the film to persons outside of the dental practice.



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[1] At this time, 49 states and the District of Columbia an active Medicaid Fraud Control Unit (MFCU). North Dakota has not established a MFCU.