

Payor Issues In 2022: Current Trends and the Road Ahead in Oncology

Attorney-client privileged / confidential / work product

Presented by:

Guillermo J. Beades, Esq.

Frier Levitt

Disclaimer

- The materials and information provided in this presentation are for informational purposes only and not for the purpose of providing legal advice. The information contained in this presentation is a brief overview and should not be construed as legal advice or exhaustive coverage of the topics. You should contact your attorney to obtain advice with respect to any particular issue or problem. Statements, opinions and descriptions contained herein are based on general experience of Frier Levitt attorneys practicing in pharmacy law and are not meant to be relied upon by anyone. Use of and access to this presentation or any of the materials or information contained within this presentation do not create an attorney-client relationship between Frier & Levitt, LLC (or any of its attorneys) and the user or viewer.
- All product and company names are trademarks™ or registered ® trademarks of their respective holders. Any use of such marks is for educational purposes and does not imply any affiliation with or endorsement by them.

About Frier Levitt

Frier Levitt, established in 2000, is a national boutique law firm focused exclusively on Healthcare and Life Sciences. The firm draws on its experience representing stakeholders across the entire healthcare spectrum. In the life sciences industry, we represent pharmacies of all kinds and assist with regulatory, transactional and litigation matters. Our healthcare clients include large physician group practices, hospitals, hospital medical staffs, ambulatory surgery centers, laboratory companies, as well as the complete panoply of ancillary service providers. We collaborate with our clinician attorneys, including multiple pharmacists, a podiatrist. Frier Levitt attorneys are licensed in many states and admitted in multiple federal courts throughout the country. We have offices in Pine Brook, NJ, New York, NY.

www.frierlevitt.com

FRIER LEVITT
ATTORNEYS AT LAW



© 2022 Frier Levitt. All rights reserved.

About Our Presenter



Guillermo J. Beades, Esq., is a Partner in Frier Levitt's Healthcare Litigation Department and Co-Chairs the firm's Insurance Defense Group.

Guillermo represents healthcare professionals in a broad range of administrative, civil and criminal healthcare matters. Guillermo has extensive litigation experience before state licensing authorities and Medical Boards (e.g., NJ BME, OPMC), federal healthcare agencies (e.g., OIG, CMS, DEA) and state healthcare agencies (e.g., NJ Medicaid Fraud Division, NY OMIG). He represents practices and healthcare professionals in matters concerning credentialing and denial of privileges, administrative discipline, Medicare audits, hospital fair hearings, post-payment demands and pre-payment audits.



WHAT IS IN YOUR RECORDS?

HEALTHCARE SCRUTINY

Healthcare is one of the most highly regulated industries in the country

Oncology practices are subject to investigation by state and federal agencies, as well as private payers

Focus is always on low hanging fruit and red flags

COMMON TRIGGERS

- Most practices are audited because:
 - Outlier status
 - Code distribution vs. “peers”
 - Use of Modifiers
 - Making “too much” money
 - Payor Targeted Area
- If you are likely to trigger an audit - do not be low hanging fruit!

GOLDEN RULES

1

Keep off the radar

2

Avoid being low
hanging fruit

3

Never accept a
payer's findings!

KEEPING OFF THE RADAR

- Deeper understanding of coding
- Changes to office visit (E/M) coding in 2021 are pro-physician
 - E/M visits are simpler to document
 - Time is on your side (count time spent before, during, and after visit)
- What are your “top 10” patient encounter scenarios?
- What are the payor policies for your most frequently used codes?
- Self Audit to ensure compliance

HOW TO AVOID BEING “LOW HANGING FRUIT”

Unsigned
charts / Charts
signed late

Reason for the
visit!

Cloning

Conflicting
data

Superfluous
notes

Outdated
entries

Attestation
redundant or
non-compliant

NEVER ACCEPT A PAYOR'S FINDINGS



PAYOR AUDITS ARE RIFE WITH MISTAKES

No credit given for another code

No attempt to read progress notes for key components

No mandatory authority or written policy in place

Misinterpretation or Misunderstanding of coding

Inconsistent findings - sometimes within the same audit

DENY...DELAY...MAYBE PAY

- “Imitation is the sincerest form of flattery” - Oscar Wilde
- Don’t hesitate to use the same tactics payors use!
 - Even when findings seem damning, deny!
 - Even though payors demand repayment immediately, delay!
 - In most cases, you can reduce the amount you need to pay considerably.



PAYOR TRENDS IN 2022

ONCOLOGY CODING UPDATE

The CMS and AMA finalized coding updates for CY 2022 with no significant coding changes impacting oncology.

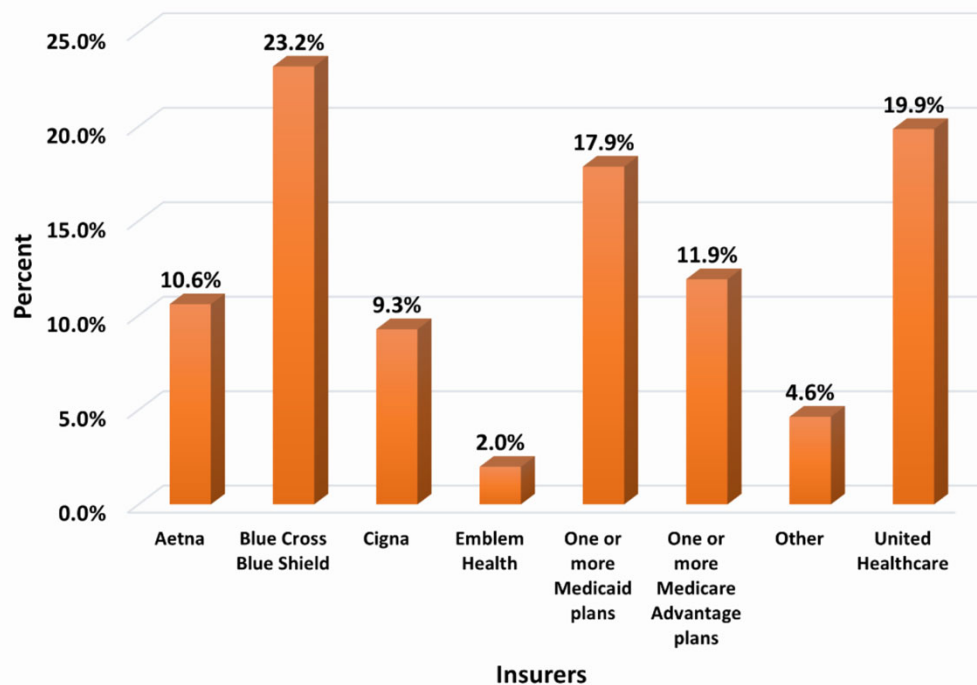
However, language was added to several sections of the ICD-10-CM highlighting the CMS' focus on the need to **“code the diagnosis to the highest level of specificity”**

ONCOLOGY AUDITS

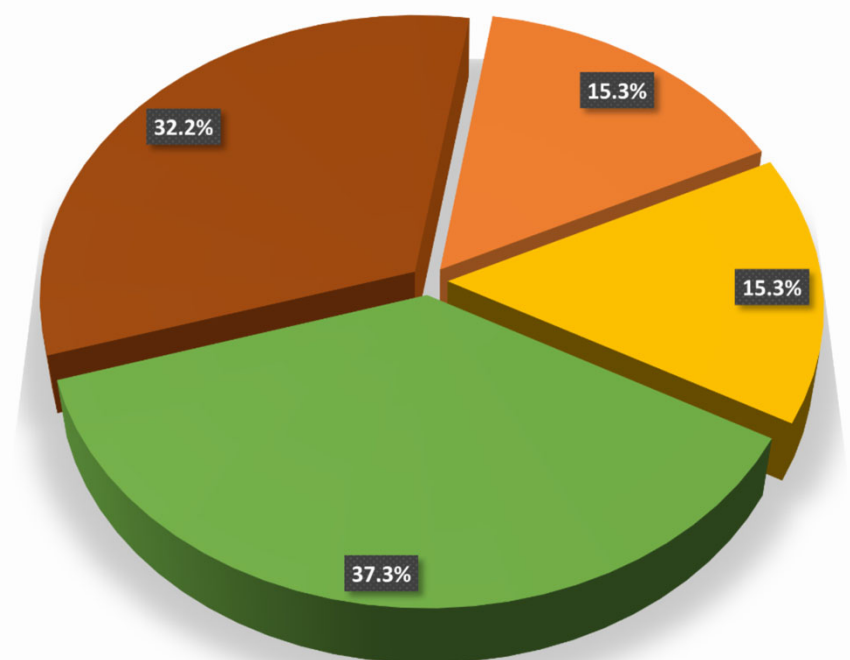
- CMS audits are now denying claims for “lack of medical necessity” when the incorrect ICD-10 code is used
- Claims can be denied when there is “undocumented laterality” or conflicting information about the affected side
- The reason for the encounter - screening, counseling, review test results, etc. - is a new area of scrutiny.

THE MOST ACTIVE PAYORS IN 2022

Insurance Companies Withholding Substantial Monies



Amount of Monies being Withheld



Less than \$5,000 \$5,001-\$25,000 \$25,001-\$100,000 More than \$100,000

How to respond to an Overpayment Demand

- Fight Every Overpayment Demand!
- Determine Potential Insurance Coverage
 - Coverage for Legal Fees & Expert Costs
- Do not give insurance auditors the benefit of the doubt
 - Coding
 - Medical Necessity
 - Statistical Sampling
 - Lookback period

NON-PAYMENTS & UNDERPAYMENTS

- Third-party companies offering less than FMV
- Pre-Authorization by one payor not being honored by subsequent payor
- Drugs being reimbursed at below cost
- E/M visit being denied or reduced in level
- What are your rights?

FINAL THOUGHTS

The healthcare industry is highly regulated and full of pitfalls

Handling a matter “in-house” can cost a practice far more than getting counsel and experts involved from the beginning

Take time to determine if something is routine or not

Avoid being low hanging fruit and fight results

QUESTIONS?

Let's continue the conversation

Website: frierlevitt.com

LinkedIn: linkedin.com/company/frier-levitt-llc

Twitter: [@FrierLevitt](https://twitter.com/FrierLevitt)

NJ Office: 84 Bloomfield Ave, Pine Brook, NJ 07058

NYC Office: 101 Greenwich Street, Suite 8B,
New York, NY 10006

Guillermo J. Beades, Esq.

gbeades@frierlevitt.com

973.852.8354