AAOS

American Association of Orthopaedic Surgeons

DOWNCODING

ACTION GUIDE

Downcoding

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Thanks to the hard work of physicians and patients, many state and federal regulators and legislators have acted to reign in health insurers' use of inappropriate and burdensome processes like prior authorization. As a result, these insurers are shifting to different forms of utilization management.

We are very concerned about recently announced policies from many of the largest commercial health insurance carriers regarding downcoding of Evaluation and Management (E/M) codes. These policies imply that payers will automatically adjust the physician-submitted E/M CPT code level down until medical records are submitted to substantiate the complexity and the medical decision making (MDM) or time associated with the reported E/M visit. However, the policies do not indicate how these coding adjustment determinations are made, making it difficult for physicians to adapt their workflows to comply, especially since physicians currently do not typically need to send their notes to substantiate E/M codes.

We are concerned about the unwarranted burden to physicians and their staff, and ultimately barriers to patients' access to quality care. This coding adjustment practice sets a dangerous precedent and raises several issues regarding the legality of this type of policy. We are also concerned that this policy will lead to physicians under-coding to avoid having claims adjusted. There are several factors that account for high level E/M visits such as the decision for surgery and ordering and interpretation of images. E/M visits are part of every physician's practice regardless of specialty, and physicians should be reimbursed appropriately for this work that is critical to patient health and wellbeing.

At the federal level, **AAOS led a coalition of over 20 primary care and specialist physician organizations in writing a letter to CMS' Center for Consumer Information & Insurance Oversight (CCIIO)** drawing their attention to these concerning downcoding policies and asking that they work with us on a solution that allows for oversight while ensuring proper payment to physicians for the care they provide to patients. Due to the way private insurance is regulated, states will be key to reigning in these downcoding policies.

20+
Organizations

In the States

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States attempting to tackle downcoding have sought out different avenues for addressing these issues, including regulatory and legislative solutions—**In California for example, CIGNA agreed to temporarily pause a novel and controversial downcoding policy** that would have automatically downcoded any higher-level Evaluation and Management (E/M) services due to their state medical societies intervention.

- The state medical association approached the issue by directly addressing the California Department of Managed Health Care (DMHC) and successfully getting state regulators to engage with CIGNA—on the basis that the policy would violate state law and was not in line with national standards from the AMA and CMS.
- As a result, the California Medical Association have released talking points around the ruling that may be helpful for other states looking to address the downcoding issues.

To read more visit: https://www.cmadocs.org/newsroom/news/view/ArticleId/50993/Cigna-agrees-to-pause-controversial-downcoding-policy

To view the talking points: https://www.cmadocs.org/Portals/CMA/files/public/Cigna%20Downcoding%20Talking%20Points%20(090425).pdf

In line with this approach, the **Michigan State Medical Society also sent** a letter to Cigna urging the payer to rescind their attempt to implement similar policies in Michigan.

- Starting October 1, 2025, the payer began to target claims for level 4 and 5 E/M services and indicate moderate or high-level complexity visits for new and established patients according to the MSMS.
- Following the letter, the president of the **Michigan State Medical Society** Amit Ghose, MD, stated the policy *"friction with physician practices, undermines trust between providers and health plans, and makes it even more difficult to deliver high-quality care in an already resource-limited environment."*

To read more visit: https://www.msms.org/About-MSMS/News-Media/despite-physician-pushback-cignas-new-downcoding-policy-went-into-effect-oct-1-act-now

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>
> ***—Amit Ghose, MD***

Legislative Solutions

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The New York Legislature saw the introduction of anti- downcoding legislation this year, with New York Senate Bill S4833 currently in the senate insurance committee, waiting for the session to restart in January 2026— the bill would take the important step of classifying downcoding as an adverse determination in utilization review, enabling policy prescriptions for adverse decisions such as in prior authorization to be applicable for downcoding.

Additionally, Tennessee in 2024 was able to pass and enact legislation, HB 677, with the state targeting downcoding for dental procedures. While not as broad sweeping as the proposed New York senate bill, the legislation helps to create a foundation and proof of concept for physicians and specialties hoping to introduce similar policy remedies.

Importantly the bill prohibits dental insurers from maintaining a plan that uses downcoding in a manner that prevents a provider from collecting the fee for actual services performed as well as requiring that an explanation of benefits for a dental benefit plan includes the reason for any downcoding or bundling result.

Understanding the importance of this issue, the AAOS is working to support partners like the Tennessee Orthopaedic Society as they move to address issues in downcoding through new legislation.

States AAOS continues to monitor also include **Massachusetts**, **North Carolina**, and others where downcoding policies have been implemented or are being considered for implementation.

For **Massachusetts**, the state's largest provider of private insurance—Blue Cross Blue Shield of Massachusetts—announced they will be pursuing a downcoding program as they "will scrutinize doctors who frequently bill it for the most expensive patient visits" according to Boston Globe.

Read more here: https://www.bostonglobe.com/2025/10/24/business/blue-cross-doctors-overcharging-insurance/?p1=BGSearch_Advanced_Results

North Carolina, likewise, faces new downcoding threats from Cigna, among others like Aetna, as the state's medical society works to meet with Cigna leadership—according to the North Carolina State Medical Society.

Read more here: https://ncmedsoc.org/latest-update-on-nc-health-insurance-payers-implementing-downcoding-claims-review-programs/

Previous Victories and Court Cases

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Thanks to previous state-based efforts, like **those in Maryland** to establish "prudent layperson standard" (PLP) and subsequent national movements, states have also been able to bring suit against downcoding efforts in cases where the decision for downcoding comes from the state itself. As has been the case with downcoding in the past, judgments and remedies have often come from the courts when policy solutions were not available.

More can be seen here: https://www.acepnow.com/article/vacep-legal-victory-illustrates-why-the-prudent-layperson-standard-still-matters/

In **Virginia Medicaid and the *Roberts* Decision** (Per the American College of Emergency Physicians and ACEP Now) The Virginia legislature in April 2020 approved a Medicaid "Downcoding Provision" which included a list of 790 diagnoses, deemed "avoidable emergencies," for Medicaid patients.

- In response, the Virginia College of Emergency Physicians (VACEP), the Medical Society of Virginia (MSV), and the Virginia Hospital and Healthcare Association (VHHA) appealed to CMS.
- Arguing the provision violated the national laws and citing previous CMS opinions on similar Downcoding provisions, VACEP moved forward to sue the Virginia Department of Medicare and Medicine (VDMAS).
  - As a result of the suit; A federal judge ruled in an April 2023 decision that the downcoding policy was not done in accordance with federal law, prompting VDMAS stopped their automatic downcoding.
  - Though claimants were able to secure reimbursement for a handful of months in April, they would later lose a secondary lawsuit to recoup all lost wages dating to 2020 as a result of the program.

For more from the Virginia College of Emergency Physicians and their wonderful series on their downcoding fight, visit: https://www.vacep.org/news-blog/downcoding-may-be-over-but-the-work-continues

790

Diagnoses deemed **"avoidable emergencies"** for Medicaid patients in Virginia "Downcoding Provision"

News Coverage

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In cases where physician groups have filed class action lawsuits, we have seen major settlements reached between payers and physicians, drawing major news attention. *Per articles like "Downcoding is Back From the Dead: Insurers Resurrected a Scheme to Pay Doctors Less That the Courts Banned" by Wendell Potter and "Long-running antitrust lawsuit ends in $2.8 billion settlement paid to providers" as reported by the American Hospital Association.*

700,000+

In 2000 over 700,000 physicians and other health care providers nationwide reached a 200-million-dollar settlement agreement with Cigna as a result of a suit that found the healthcare plan provider charged improperly denying, delaying and reducing payments.

For more information: https://healthcareuncovered.substack.com/p/downcoding-is-back-from-the-dead?utm_source=substack&utm_medium=email&utm_content=share

$2.8 billion

As recently as this year, Blue Cross and Blue Shield (BCBS) reached a $2.8 billion settlement following a class-action 2013 lawsuit alleging anti-competitive use of limits to competition and restrictions on providers' price-setting ability according to reports discussing the increasing prevalence of the downcoding issue.

For more information: https://www.aha.org/news/headline/2024-10-15-long-running-antitrust-lawsuit-ends-28-billion-settlement-paid-providers

Specials like "Guilty until proven innocent': Inside the fight between doctors and insurance companies over 'downcoding'" from NBC News, comes as part of their series "Cost of Denial" also serve to bring light on the issue as they examine automatic downcoding practices.

- Understanding the diversity of medical and health centers, the article places focus on the impact that downcoding has independent practices and patient care.
- The article also highlights advocacy initiatives to stop the practice as well as interviews with physicians about their difficulties with transparency from insurers when appealing downcoded claims.

Read the article and view the entire series here:
https://www.nbcnews.com/health/health-care/guilty-proven-innocent-fight-doctors-insurance-companies-downcoding-rcna230714