The American Occupational Therapy Association  
Advisory Opinion for the Ethics Commission  

Ethical Considerations for Productivity, Billing, and Reimbursement  

Productivity is the measurement standard by which most occupational therapy services are quantified, and it reflects workload expectations of the practice environment. Contemporary occupational therapy practice is influenced by expectations for objective, quantifiable, functional outcomes and also by efforts to generate “units of service” for reporting and reimbursement. Workload expectations and productivity measurement are legitimate management tools used to ensure appropriate staffing resources for service delivery as well as to maximize reimbursement, with the goal of achieving economic sustainability. Service delivery models, productivity standards, and the practices and methods used to report services for reimbursement must be reasonable and adhere to prevailing ethical and legal standards. The financial interests of the institutional provider and the individual therapist should not supersede concerns for the client’s own health-related benefit in the planning and provision of occupational therapy.

In today’s environment, health and human services are influenced by complex business models. Labor accounts for a significant percentage of health care and human services costs, so efforts to rein in escalating expenses have emphasized productivity management as an essential tool to positively affect net revenue. However, increasing costs, coupled with diminishing reimbursement and emphasis on efficiency, produce a dynamic challenge for occupational therapy practitioners (Lachman, 2012). In particular, practitioners are challenged to maintain higher caseloads to offset decreased per-client reimbursement, yet manage direct and indirect (e.g., documentation) client-related care in less time than previously available, while still meeting quality standards for appropriate clinical services.

The *Occupational Therapy Code of Ethics (2015)* (referred to as the “Code”; American Occupational Therapy Association [AOTA], 2015) reinforces in Principles 4 and 5 that occupational therapy practitioners have an ethical and legal duty to be vigilant in knowing and following the standards and regulations related to clinical documentation to accurately report “treatment time” and bill for their services (see Case Example 1).

Practitioners have an obligation to conform to the productivity standards set by the organization, yet they also have a professional duty to critically examine whether those
expectations are congruent with ethical guidelines, legal standards, and requirements of the payer. If these conflict, administrative directives should not take priority over the practitioner’s clinical judgment and the best interests of the patient unless legally mandated (Principle 2H). However, efforts to comply with such directives can result in moral distress or ethical dilemmas for occupational therapy practitioners. Addressing ethical dilemmas related to productivity and reimbursement is a professional responsibility and may require information seeking, assertive action, confrontation, and moral courage to achieve resolution (Hooper, 2011).

**Case Example 1 Juan and Nancy**

**Juan**, an occupational therapist in an outpatient pediatric setting, has learned that a fellow occupational therapist, **Nancy**, routinely treats up to 5 children at a time during a single 1-hour session. For example, she provides treatment for therapeutic activities, neuromuscular reeducation, therapeutic exercise, and activities of daily living at one time. She subsequently bills and documents for four *Current Procedural Terminology*\textsuperscript{TM} (CPT\textsuperscript{®}) codes (American Medical Association, 2014) per child. This practice means that Nancy is billing for up to 20 units (5 children × 4 CPT codes with “per-15 minute” definition) of direct one-to-one time during a 1-hour treatment time.

Nancy has justified this practice by stating that she is not advertising her treatment time as “group” treatment but is grouping children appropriately by common treatment needs or goals and that the children are working on individual activities. She has indicated that she sits at a “feeding type” table (children in a half-circle) or “lines them up on therapy balls” while working. She then “sets them each up on exercises” or their handwriting program and divides her time among them to see that they all are staying on track. Juan, however, has worked with several payers in the past and believes that billing for 4 CPT codes and 15-minute charge units per child has not taken place, is not an accurate claim request, and does not correctly describe the group procedure performed.

Juan thinks that Nancy’s practice may be an intentional act of deceit for the purpose of receiving greater reimbursement, but he has some doubts and does
not want to judge a colleague without knowing all the facts. Juan wonders how best to address this issue with Nancy.

**Case Discussion**

Once a practitioner has identified an ethical problem or dilemma, a decision-making framework can facilitate his or her analysis of the situation. The process should involve gathering the relevant facts, considering additional information and resources, determining alternatives for action, choosing the best course of action, and evaluating the results of the action or outcome.

**Gathering Relevant Facts**

Juan can begin by gathering the facts pertaining to the case. What information does he know, and what additional information might he need? Juan must first be certain about how Nancy’s treatment sessions are being billed, which could include checking charge sheets, if available.

**Considering Additional Information and Resources**

Juan can refer to the Code to see what principles may apply to billing and reimbursement issues. Veracity, Principle 5C, indicates that occupational therapy practitioners should “record and report in an accurate and timely manner and in accordance with applicable regulations all information related to professional or academic documentation and activities” (AOTA, 2015, p. 6). Likewise, Justice, Principle 4E, directs practitioners to “maintain awareness of current laws and AOTA policies and Official Documents that apply to the profession of occupational therapy” (p. 5). In addition, the principle of Justice, 4K, specifies the obligation to report to appropriate authorities any illegal practice actions or any breaches of the Code.

Most health care payer organizations have formalized and confidential mechanisms to report fraud and abuse pertaining to billing and reimbursement practices. Some have dedicated telephone hotlines for providers to call. However, reporting would be premature until Juan knows all the facts. Juan should continue to gather further information in the organization (Principle 6J; AOTA,
2015, p. 7) before reporting to the payer organization or to state or federal authorities.

It is of paramount importance for Juan to know the specific rules and regulations that pertain to Nancy’s billing practices before proceeding further. Does the health care organization where Juan is employed have a reimbursement compliance program or compliance officer? If so, Juan could seek further clarification by referring to the health care payer organization’s reimbursement policies and procedures. He could make a fact-finding appointment with the compliance officer to discuss the situation. There would be no need to disclose the name of the practitioner at this point, and the discussion could occur as a “hypothetical.” If, indeed, it was determined that the billing practice was not permissible, Juan would have an obligation to act. If the organization did not have a compliance program or officer, Juan could seek clarification by calling the payer organization’s provider information number.

In this scenario, the compliance officer checked the payer policies and procedures and determined that billing for 4 individual CPT codes while providing the treatment in a group setting was not permissible. The plan of care and all documentation and billing records that were obtained did not accurately reflect the services provided and were not in alignment.

*Determining Alternatives for Action*

After the facts are determined, several options are open to Juan. He could speak directly to Nancy, notify his supervisor, report Nancy to the compliance officer, or report the situation directly to the payer.

*Choosing the Best Course of Action*

In an attempt to resolve the ethical problem internally, Juan decided to speak directly to Nancy first as a potential opportunity to educate her. He knows that Principle 6, Fidelity, of the Code highlights the obligation to be faithful and loyal. He feels a sense of loyalty to his colleague as well as to his employer.

Juan first sought to determine Nancy’s knowledge of reimbursement and coding regulations. He found out that only recently has Nancy documented and billed 4 CPT codes when treating 5 patients at a time in a group. Nancy
told Juan that she had recently attended a conference during which several other occupational therapy practitioners were discussing billing practices for group treatment sessions. She thought the logic of this approach seemed to be sound and was unaware that it was against payer guidelines. Nancy thanked Juan for informing her of the rules and said she would stop this practice immediately.

Juan felt good about addressing the ethical problem with Nancy and was confident that the unethical and illegal practice would stop. However, after further reflection, Juan was still troubled that their health care organization received fees that were not “commensurate with services delivered” (Justice, Principle 4M; AOTA, 2015, p. 5). Juan spoke again to Nancy about his concern. Both agreed that the overpayment should be returned to the payer. Juan said he would be glad to offer support to Nancy by attending the meeting in which she disclosed the situation to their supervisor. Juan, Nancy, and her supervisor met, and immediately after the meeting, the supervisor notified the compliance officer, who notified the payer and returned the funds.

**Evaluating the Results of the Action or Outcome**

Although the reimbursement issue was documented in Nancy’s personnel file, no disciplinary action was taken. Nancy was provided with training to help ensure that she would not make any further inaccurate claim requests and would have the knowledge necessary to use appropriate resources and information to enable compliance.

However, this case could have turned out much differently. If certain leaders in the health care organization had encouraged false billing or a supervisor or compliance officer refused to take appropriate action, Juan would have had to determine what additional action he needed to take. He might have decided to go further up the chain of command in the organization. If the issue was not addressed internally within the organizational structure, Juan might have had additional options. He might have decided not to work in an environment in which unethical and illegal practices were not addressed. Juan also could have decided to report to external entities, such as the payer organization’s fraud and abuse hotline or state or federal agencies. Doing so might have been the only
option he had left to disentangle himself from the unethical and illegal activity.

Juan also could have done nothing. However, doing so could have resulted in moral distress for him and would not have met his ethical obligations. If Juan had gone along with fraudulent billing practices, he could have been subject to payer, state, or federal audits. As previously mentioned, for Juan, these could result in fines, loss of license, loss of employment, and even criminal conviction and incarceration.

THE ISSUES

Some of the most frequent questions posed to AOTA by occupational therapy practitioners represent the challenges and dilemmas they encounter in striving to meet employers’ expectations while practicing efficiently, legally, and ethically. Occupational therapy practitioners work in environments in which productivity expectations and business practices often drive service delivery models and daily schedules. Administrative policies; practice standards; available labor resources; environmental conditions; technology systems; payment sources; and the fluid, real-time decision making for daily scheduling all influence how caseloads are managed and prioritized. Practitioners may experience ethical conflicts and moral distress when their work effort does not meet productivity expectations, when the standards seem arbitrary or unrealistic, when the physical environment or technological barriers stymie efficiency, or when administrative directives for providing and reporting services do not conform to regulatory or reimbursement requirements (Slater, 2006).

Ethical challenges related to productivity, billing, and reimbursement may include but are not limited to

- Being directed to charge for services not provided, treating patients in groups when reimbursement guidelines do not allow such configurations, or using students or other service extenders to provide “billable” service when not permissible within the applicable regulations (fraud, Veracity, and Fidelity);

- Being directed to rate patients’ functional performance as more impaired than is supported
by objective data, providing services that are not medically necessary (overtreatment),
treating a patient according to a preestablished “minutes” or resource utilization grouping
mandate when the patient is unable to tolerate that level of service, or coercing participation
in services despite the patient’s objections (patient rights, Autonomy, and Nonmaleficence);
and
• Being required to meet productivity standards that are not realistically achievable in the
typical workday; feeling forced to comply with employer directives to “keep the job” rather
than “do the right thing”; or deciding whether to report a coworker, manager, or
organization when violations are suspected or verified (Fidelity and Justice).

DISCUSSION
The ethical principles most applicable to addressing conflicts related to productivity, billing, and
reimbursement include Beneficence (Principle 1), Nonmaleficence (Principle 2), Autonomy
(Principle 3), Justice (Principle 4), Veracity (Principle 5), and Fidelity (Principle 6). Occupational
therapy practitioners are trained to use evidence-based tools to assess impairments, occupational
performance, and barriers to performance. They must accurately and truthfully document objective
data and develop intervention plans that are reasonable and necessary (Levack, 2009). For example,
Principle 1A of the Code describes the duty of an occupational therapist to use evaluation tools that
are appropriate to the individual and develop an intervention plan that is specific to the patient’s
needs (AOTA, 2015, p. 2).

Administrative Directives
Following administrative directives to be “creative” in “finding” goals to keep a patient on the
caseload or conforming to an administrative override of discharge from services when goals have
been met violates the best interest of the patient, as outlined in Principle 1H of the Code:
“Occupational therapy personnel shall terminate occupational therapy services in collaboration with
the service recipient or responsible party when the services are no longer beneficial” (AOTA, 2015,
p. 2). Taking undue efforts to meet organizational goals for a larger caseload and pursuing profit-
based business objectives by inflating the need for or falsely reporting services are all examples of
fraudulent behavior. Fraud is defined as “making false statements or representations of material
facts to obtain some benefits or payment for which no entitlement would otherwise exist” (Centers for Medicare and Medicaid Services, 2012).

Principle 2, Nonmaleficence (do no harm), clarifies that unnecessary treatment may present some risk, with little or no benefit, and also has the potential to harm a patient (AOTA, 2015). From a legal perspective, “forcing” participation when a patient refuses treatment can be classified as assault and battery. From an ethical perspective, practitioners should also consider the potential harm that may occur when a patient has exhausted his or her physical tolerance. Complying with organizational demands to engage patients in treatment while ignoring their capacity to consent or violating their freedom of choice is not justifiable and clearly violates the patients’ right to autonomous decision making, as noted in Principle 3C of the Code (AOTA, 2015).

**Payment Considerations**

Principle 4M, Justice, requires that services may not be delivered and charged inequitably on the basis of payer or reimbursement considerations. When the needs of several patients are equivalent, providing more services to those with the most lucrative reimbursement, to the detriment of those with inadequate funding, is not ethically defensible (Dineen, 2011). In addition, charging different rates on the basis of variable reimbursement potential is not acceptable (Treloar, 2010). Fee schedules must be consistent, regardless of the actual payment, which is based on provider contracts or governmental payment rules.

However, rate consistency does not prohibit “prompt pay” incentives, such as a discount rate if a bill is paid before discharge or within 30 days. These incentives may assist institutions in avoiding further collection costs. Offering these incentives is considered an ethical practice as long as the discounts are offered to everyone and do not discriminate (for more information, see U.S. Department of Health and Human Services, 2008).

The inevitable, intricate relationship between reimbursement and clinical service provision can be difficult to address but must be carefully considered by practitioners. The challenges of reimbursement are accurately reflected in other occupational therapy literature:

Although payment cannot be the sole consideration when planning occupational therapy evaluation and intervention, our services must fall within the scope of reimbursable services for our clients—otherwise, clients needing occupational therapy services will not be able to
obtain them. Providing services that can be afforded only by those wealthy enough to pay out of pocket is discriminatory and will compromise the survival of the profession. (Doucet & Gutman, 2013, p. 8)

Yet this position may present challenges, because occupational therapy practitioners also have a duty to advocate for services that patients need and to seek strategies that enable access to services, especially when traditional reimbursement sources are not an option.

Conversely, situations exist in which practitioners are not limited by constraints of traditional reimbursement. Patients may opt to seek and pay for services for which their health care payer does not reimburse or allow. Health care consumers with financial means have a right to pay for “noncovered” services. Principle 4C, related to Justice, allows that private practitioners may accept cash and permits practitioners to charge for these services on a “sliding scale” as long as a self-pay policy is established and applied consistently.

DOCUMENTATION

Several additional ethical principles provide occupational therapy practitioners with guidance related to reporting services. Principle 5C, Veracity, of the Code clearly states that occupational therapy practitioners must “record and report in an accurate and timely manner and in accordance with applicable regulations all information related to professional or academic documentation and activities” (AOTA, 2015, p. 6). Furthermore, as noted in Principle 5B, “occupational therapy personnel shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, misleading, or unfair statements or claims” (p. 6). Communications include clinical documentation, charge or billing forms, and written or verbal reporting to patients, coworkers, subordinates, and administrators.

The principles of Veracity, Justice, and Fidelity also guide occupational therapy practitioners to be truthful by reporting unfair, false, or fraudulent claims for provider reimbursement of services. For example, several components of Principle 4, Justice, and Principle 6, Fidelity, highlight the duty to take appropriate steps to report suspected legal, regulatory, or ethical violations. Practitioners have an ethical obligation to take action when witnessing situations in which false or erroneous documentation or billing occurs. Reporting substantiated concerns to a supervisor or other administrator is an ethical obligation for members of a self-regulating profession. Ignoring violations is not an appropriate ethical response. Silence is implicit consent, and inaction allows
harm to continue.

**PROFESSIONAL RESPONSIBILITY**

Despite the significant challenges of reimbursement policies, there is no justification for engaging in illegal or unethical behavior while providing, reporting, or billing for occupational therapy services, even if one’s intentions are good. Occupational therapy practitioners cannot ignore their ethical and professional duty to be informed about billing requirements, nor can they rely solely on others, such as supervisors or administrators, to ensure compliance. Individual practitioners who do not comply with regulatory requirements for reimbursement compromise their legal right to work. Other potential negative consequences for practitioners that may result from unethical practice include criminal charges, professional disciplinary action, and scandal or blemish on their professional reputation.

Although many health care organizations, such as hospitals, rehabilitation centers, long-term care facilities, and home health agencies, have compliance programs and dedicated professionals to keep up to date with federal, state, and other requirements, ethical practitioners must verify the source and accuracy of payer processes and administrative directives that affect their practice and payment for services. Certainly the best, first step is to work internally within the formal structure of the organization. If that is not effective, reporting should be considered. Adverse actions for offending practitioners can include exclusion from participation in federal, state, or private programs that provide reimbursement for services. Consequences may also include termination of employment and loss of right to work if a practitioner’s state license is suspended or revoked. In severe cases, fines are levied, and incarceration can result. In addition, organizations governing occupational therapy practice share information about adverse final actions, so disciplinary action could also be taken by the National Board for Certification in Occupational Therapy or by the AOTA Ethics Commission if the practitioner is within the jurisdiction of these professional organizations.

Reporting fraudulent or unethical activity requires moral courage and may result in negative professional repercussions or jeopardize one’s professional employment, even when reporting is the right course of action. In an untenable environment, an occupational therapy practitioner may make a decision to leave his or her job, particularly if violations are frequent, violations are not addressed or are not resolved, or the practitioner’s ethical obligations are constantly challenged. The possible
negative consequences for the individual who makes these difficult personal decisions cannot be
discounted.

When retaliation is a credible threat, practitioners should investigate whistle-blower protections
and mechanisms to report anonymously prior to taking action. Many organizations have whistle-
blower protection programs, as well as policies and procedures to guide employees when they
believe they have observed financial improprieties, ethical violations, or other illegal activity.
Whistle blowing may result in short-term ramifications, such as “an individual having to sacrifice
their own greatest good for the good of others” (Hooper, 2011, p. 19), but the long-term yield of
doing the right thing should provide enduring relief. In situations in which whistle-blowing results
in a finding of fraud, the “relater” (i.e., reporter) may reap a financial reward for assisting in
identification of the dis-honest conduct. At the federal level, the False Claims Act (2010) provides
the opportunity to redress adverse employment consequences and offers a potential, substantial
monetary reward if the proper legal procedures related to whistle blowing are followed. This law
allows a private person to sue a person or company who is knowingly submitting false bills to the
federal government. The act also protects qui tam plaintiffs (i.e., whistleblowers) who are
“demoted, suspended, threatened, harassed, or in any other manner discriminated against in the
terms and conditions of employment” (False Claims Act, 2010, § 3730[h], [1]), for acts done in
furtherance of filing a claim under the act. This pro- vision allows reinstatement; double back-pay;
interest on the back-pay; and special damages, such as reimbursement for litigation costs and
reasonable attorneys’ fees.

Despite a whistle-blower’s good intentions, the risks associated with reporting must not be
minimized. It is essential that the whistle-blower understand the differentiation between legal and
illegal practices and gather substantial information and evidence prior to filing a complaint.
Nonetheless, although doing nothing may be an option, practitioners must consider the potential
damage to their self-esteem, personal integrity, and moral dis-tress that may result from not taking
action and remaining in an adverse and unethical work environment.

Exhibit 1. Resources for Ethical Productivity, Billing, and Reimbursement Practices

- U.S. Department of Health and Human Services, Office of Inspector General
  800-447-8477, TTY: 800-377-4950
  Tips Hotline, PO Box 23489, Washington, DC 20026-3489
  [http://oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-03A.pdf](http://oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-03A.pdf)
CONCLUSION

Productivity demands and reimbursement issues can be sources of tension in the workplace. The realities and challenges of the current clinical service delivery environment do not supersede occupational therapy practitioners’ ethical and legal obligations to be knowledgeable about and compliant with applicable standards and regulations. Occupational therapy practitioners have responsibilities as employees in an organization to meet reasonable productivity requirements and bill for services accurately and appropriately. In addition, practitioners have an overarching ethical duty to advocate for safe, effective, appropriate services for patients.

Discordance between these two concepts is an ongoing challenge and may lead to unresolved conflict or provoke ethical angst. Some difficult decisions may be required. When discrepancies and potential violations are identified, occupational therapy practitioners have an ethical responsibility to consider taking action. Using ethical reasoning and accessing the available resources from AOTA and elsewhere (see Exhibit 42.1) to resolve conflicts can help practitioners meet this professional obligation.

REFERENCES


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