

Establishing Usual, Customary, and Reasonable Values for Services

Medical coders, billers, and auditors have the expertise to weigh in.

This article discusses forensic work with respect to healthcare usual, customary, and reasonable (UCR) fee ranges. This is a peer review article in which the author (me) requests my peers (you) to provide your objective thoughts on the information provided within.

The Work of a Forensic Expert

Medical claims review often involves a forensic expert — often a medical coder, biller, or auditor — if an injured person is claiming financial damages related to an accident in a legal case. The forensic expert works with either the attorney for the injured person (plaintiff) or the insurance carrier (defendant). The outcome of the report is the same regardless of who the forensic expert works with. In other words, the forensic expert remains objective regardless of which side they are working with.

The forensic expert reviews the medical bills in question to ascertain the following:

- Was the medical service related to the date of injury? For example, a red flag would be if the diagnosis on the invoice, or claim, is for a visit to a healthcare provider for birth control, but the patient is claiming a back injury.
- Did the dates of service occur prior to the date of injury? If so, these services would not be included in the review. An exception would be a note in the report stating that a similar diagnosis was made prior to the date of injury.

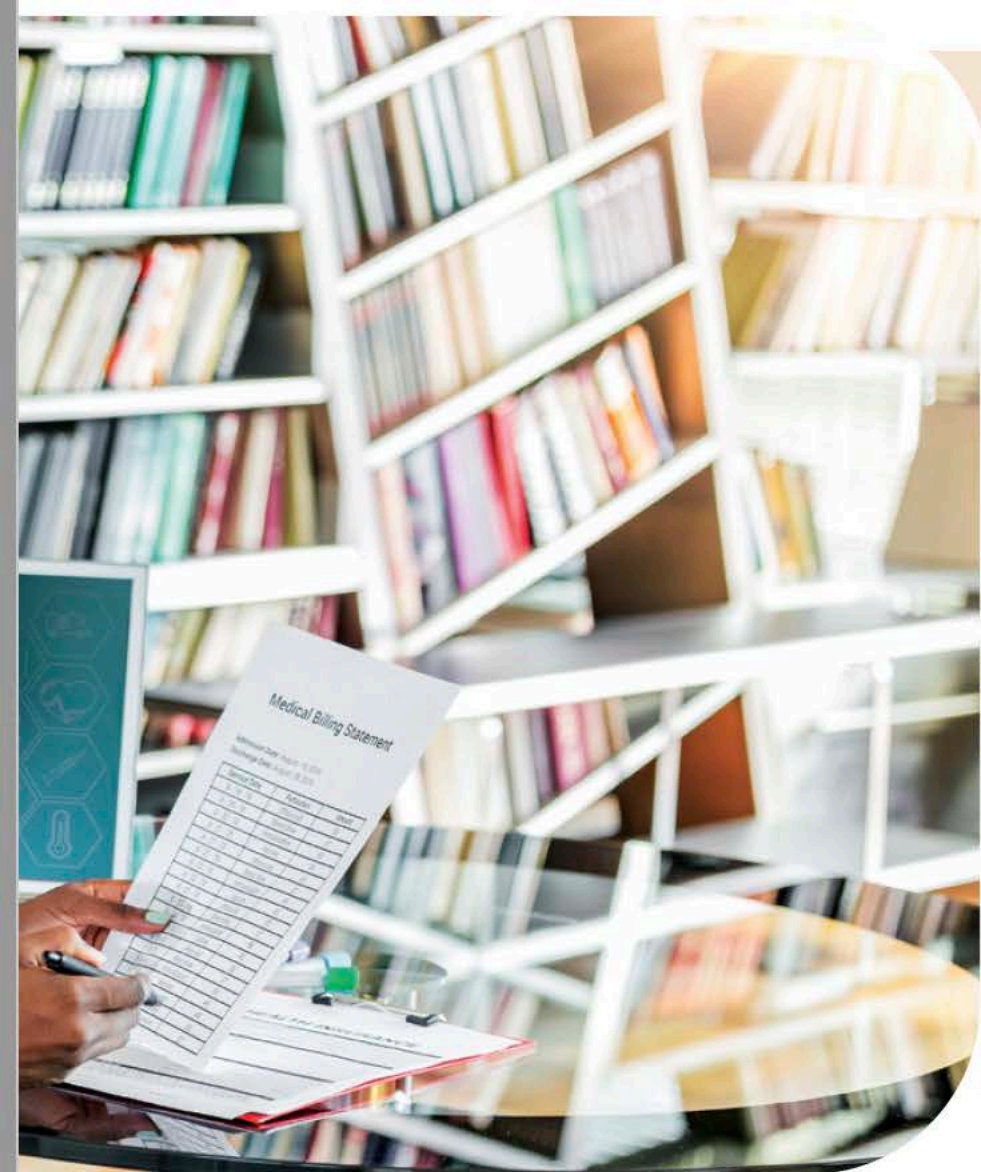


- Where was the patient treated? The geographical area where the healthcare provider rendered care is important for establishing what other healthcare providers charge in the same geographical area.
- Were any of the procedures unbundled? If the main procedure includes multiple services, an analysis and review of the healthcare procedures being billed should be completed to ensure the patient is not being overcharged. An example would be an epidural injection that is described by the CPT® code to include fluoroscopy, and the healthcare provider bills for fluoroscopy in addition to the epidural injection.

Once the forensic expert determines these things, it's time to evaluate the amount billed.

What Is UCR?

Healthcare providers can charge any amount they want as long as it's their customary charge. It's inappropriate or considered economic bias if a healthcare provider charges some patients one fee and others a different fee for the same service. The charge for each service should remain the same regardless of type of payment or insurance status.



“A percentile is a comparison between the total billed amounts collected during a year and geographical area.”

The American Medical Association (AMA) defines UCR under the AMA Policy H-385.923 as:

- a. Usual; fee means that fee usually charged, for a given service, by an individual physician to his patient (i.e., his own usual fee);
- b. A fee is ‘customary’ when it is within the range of usual fees currently charged by physicians of similar training and experience, for the same service within the same specific and limited geographical area; and
- c. A fee is ‘reasonable’ when it meets the above two criteria and is justifiable, considering the special circumstances of the particular case in question, without regard to payments that have not been discounted under governmental or private plans.

Usual and customary refers to the prevailing rate charged in a geographical area and time period. In most data sets, that would be the 50th percentile, or median.

Reasonable is above the usual and customary 50th percentile (to take into consideration special circumstances), but lower than the 100th percentile. A percentile is a comparison between the total billed amounts collected during a year and geographical area. For example, the 80th percentile represents that 20 percent of other billed amounts are higher than the 80th percentile amount listed.

Special circumstances to consider for the higher reasonable fee amount might include specialized training, fellowship in the area of the medical provider’s specialty, and presentations or publications to physician peers regarding their field of expertise — to name just a few.

If the usual and customary is the 50th percentile of a data set of fees charged (median) in a geographical area and time period, what would represent reasonable? Per the AMA, reasonable is above usual and customary, which is the 50th percentile. To determine reasonable, research is conducted to see what others across the country consider reasonable.

For example, the Texas Division of Insurance (SB 1264) states that the 80th percentile is considered reasonable in regard to surprise bills or those paying out of network. The Veterans Administration also uses the 80th UCR percentile. Connecticut uses the 80th percentile when defining UCR. New York’s out-of-network calculation uses the 80th UCR percentile. Liberty Mutual Auto Insurance recognizes the 80th percentile as reasonable.

Collecting Data

Billed amount data sets collected by a third party are often used by healthcare providers to set their fee schedules. Proprietors must be

The Federal Trade Commission (FTC) stated in October 2022 that competition in healthcare benefits the consumer to contain cost and improve quality.

Healthcare providers have been trained since their residency program that they can’t discuss or compare charges with their peers, lest they be charged with price fixing, collusion, or antitrust. Thus, healthcare providers need reliable data resources that contain fully billed amounts to ascertain that the prevailing rates are in their geographical areas to set their fee schedules.

Hardship policies should be in place in every medical office in case some patients can’t pay the healthcare provider’s fee and the healthcare provider has a lower amount that they offer for such hardships. This is acceptable as long as the lower fee is not less than the Medicare Physician Fee Schedule (MPFS), so as not to violate a most-favored nations clause.

The *Federal Register* provides good references regarding customary charges for healthcare providers. For example, 42 CFR 405.503 states that customary charges refer to the uniform amount which the individual physician or other person charges in the majority of cases for a specific medical procedure or service. The *Federal Register* also provides appropriate and inappropriate examples of billing a patient less than, or more than, their prevailing (customary) rate.

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careful that the data is collected carefully and made available for use by many, especially since the data set includes most of us reading this article. Only fully billed amounts are allowed in the data set, not paid amounts or insurance allowed amounts. Paid amounts or allowed amounts are available for purchase in a separate data set.

There are many UCR data resources available. (So as not to discredit any entity, I will not discuss the publisher of the data resource.) The data is obtained from insurance claims submitted to insurance carriers or by third party billers that are working on claims or patient invoices. Only the fully billed amount is collected for the purpose of UCR.

Data can be divided into three categories:

1. Data obtained from healthcare claims submitted to commercial and government payers.

This first group of data submitted to commercial payers and government payers is sold by several entities. The data can be in the form of a book or an online platform. The data is grouped into year and geographical area. Some sellers of this data will not allow the data to be used in legal court cases.

2. Data obtained from claims submitted to commercial, government, and private payers.

This second group of data is more diverse because it includes commercial, government, and private payers.

3. Data submitted to government payers.

This third set of data is collected from government payers, such as Veterans Administration or Medicare.

Other types of methodology used to set healthcare provider fee schedules would be to use a percentage of the MPFS. Some experts use 130 percent to 300 percent of the MPFS to set a reasonable fee amount. The problem with this method is that data collected from the MPFS only comes from Medicare providers who see patients over the age of 65. And not all CPT® codes are represented in the MPFS such as outpatient consultations codes 99242-99245.

In 2021, I conducted research to see what method healthcare providers used to set their fee schedules. I asked the American Medical

Billing Association (AMBA) to send out a survey to its members who bill for healthcare providers. The survey asked the billers what data tools the healthcare providers used to set their fee schedules. Over 300 medical billers responded that the majority of healthcare providers used data collected from commercial payer claims, government claims, and from third party billers (option 2). Some providers said they used a percentage of the MPFS (option 3).

Call to Action

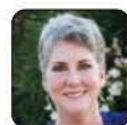
Healthcare providers are trained as clinicians, not as economists. It’s rare if a medical school or residency program offers medical coding, billing, or fee schedule design in their curriculum. That is why the career paths of medical coding, billing, and compliance were born — to assist clinicians with non-clinical business tasks.

Medical coders, billers, and office managers understand medical coding and billing. They assist the healthcare provider with setting fee schedules. These non-clinicians are the economists of the medical office and are vital to assisting patients, attorneys, judges, and juries understand how fee schedules are set and how to determine the UCR value of services rendered in the past or projected for future care estimates. UCR is important to give perspective on the fees charged for healthcare services during a specific time period, within a specific geographical area.

It’s my opinion that data from commercial claims, government claims, and third-party biller information is the most diverse data set and what should be used to set fee provider schedules or when conducting an UCR analysis. The 50th percentile (median) represents the usual, customary, or prevailing charge, and the 75th to 80th percentiles represent the reasonable billed amount. This is based on what many states and payers are using in an official capacity or for reimbursing surprise bills, out-of-network services, and special circumstances.

Please submit your questions or thoughts about this article to letterstotheeditor@aapc.com so that AAPC can share them with me. Your identify will not be revealed to me. I will answer your questions or comments and email them back to AAPC.

Please let AAPC know if you are interested in having me discuss this topic/career virtually at your chapter meeting. **HBM**



Jacqueline Nash Bloink, MBA, RHIA, CFE, CHC, CPC, CPC-I, CMRS, has 29 years of work experience in healthcare as a medical office manager, coder, biller, and compliance director with medical office and hospital experience and multiple medical disciplines. She has worked as an expert witness and consultant since 2016. She is honored to be co-presenter with CMS and OIG regarding healthcare compliance and the Affordable Care Act in 2014.

Resources

AMA Policy H385.923, Definition of Usual, Customary and Reasonable

42 CFR 405.503 Determining customary Charges

FTC Competition in the Health Care Marketplace

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