Avoid Insult to Brain Injury

Fight insurance claim denials with these insider tips.

BY ORLY AVITZUR, M.D.

hen a car accident caused her brain injury 10 years ago, Anne Forest was too impaired to understand the full extent of the damage. This Ph D economist soon realized that she was unable to read, drive a car, or perform simple addition. It took almost two years for her to get into a cognitive rehabilitation program, but when she did, she saw big improvements. "It changed my life," says Forest. She learned strategies to compensate for her injuries, such as avoiding work after 7 p.m., which normalized her sleep patterns. Despite significant progress, the hospital discontinued the rehab

because her insurance company would only allow 16 visits. Like many people with traumatic brain injuries, Anne lacked both the cognitive ability and the emotional energy to fight their decision.

Over five million people in the U.S. are disabled from brain injury, a condition more common than stroke. Traumatic brain injuries can affect memory, language, thinking, learning, and behavior. Unfortunately, most cognitive rehabilitation services—individually tailored treatment plans that help the brain reorganize-are denied by insurance companies. "They base their denials on four arguments: the benefit is not covered under the policy; it is not medically necessary; the patient has reached a plateau; or the paperwork was not done properly," explains Joseph L. Romano, an attorney who specializes in brain injury cases. Romano, who has successfully reversed countless managed-care decisions, says that nearly every denial can be overturned. Here's how.



CHECK THE MASTER POLICY

Request a copy of the Master Insurance Policy or Master Provider Agreement, and read the definitions, limitations, exclusions, and treatment guidelines. Don't rely on telephone conversations with clerks: Review the policy carefully and get the reason for the denial in writing. "Some insurance companies use the old bait and switch—they'll say it was denied for one reason, and after getting you to send documentation, they'll change their explanation," Romano says. "The letter of denial blocks this ploy."

CHANGE THE DESIGNATION OF REQUESTED SERVICES

Make sure that you understand all the definitions in the policy, because terminology is important. For example, while cognitive therapy may be excluded from coverage, most policies cover "medically necessary" outpatient speech-pathology treatment, occupational therapy, or neuropsychological services—and those disciplines all provide cognitive treatment.

GET A BASELINE OF FUNCTION

Get neuropsychological testing as soon as possible following a brain injury. When insurance companies claim that the patient has plateaued in terms of cognitive gain, testing can demonstrate continued progress. Testing can also detect problems not discernible at first. "It's important to understand what [the patient] came to the injury with and what resources they need to get better," explains Douglas I. Katz, M.D., medical director of the Brain Injury Programs at Braintree Rehabilitation Hospital in Boston. Forest's first team of doctors didn't realize the

extent of her impairment because they didn't know how highly she functioned prior to injury.

APPEAL THE DENIAL OF SERVICE

"Families need to advocate for themselves," Dr. Katz emphasizes. "The first answer is not the last answer. Never take a denial as final."

Keep in mind that there are several levels of appeal; if internal appeals fail, patients can ask for an external appeal, in which members of the community not affiliated with the managed-care company, such as practicing physicians and attorneys, weigh in. "If a client starts the process early enough, 90 percent succeed with the first appeal, and of those who fail, 95 percent or more succeed with external appeal," Romano says.

Forty-two states have an external review process, notes Janet McCarty, private health-plans advisor for the American Speech-Language-Hearing Association (ASHA). The Kaiser Fam-

ily Foundation (kff.org/consumerguide) offers information about each state's procedures and appropriate contacts. "Health plans frequently deny payment for

cognitive rehabilitation by saying it is experimental or investigational, a policy stemming from a 2002 BlueCross BlueShield report which stated that available data was insufficient to decide whether cognitive rehab is beneficial," McCarty says. But many experts at the ASHA, the National Institutes of Health, and the U.S. Department of Defense disagree. Says McCarty: "Often, external review looks at the available evidence and recognizes that it's solid."

"Numerous well-designed, scientifically rigorous studies on cognitive rehabilitation are confirming what experienced clinicians have witnessed with patients," observes Gregory J. O'Shanick, M.D., medical director of the Center for Neurorehabilitation Services in Midlothian, VA, and national medical director of the Brain Injury Association of America (biausa.org). "When access to cognitive rehabilitation is not arbitrarily limited, and when it's delivered by experienced therapists, individuals can make dramatic recoveries."

FIND AN EXPERT

It's daunting to navigate the appeal process, which is why Dr. Katz recommends that families work with specialists who understand the system. Independent case managers can be effective, and sometimes their fees can be paid by deferred funds from settlements or from worker's compensation funds. Attorneys such as Romano who specialize in lifecare planning for patients with disabilities or lifetime injuries may also provide assistance.

"Nearly every denial can be overturned by the correct course of action."

APPOINT A LEGAL GUARDIAN

"Failure to designate guardianship is one of the most serious mistakes people make," Romano says. Without

a court decree, carriers have no obligation to follow the requests of spouses, parents, children, or other family members. Court-appointed guardians, on the other hand, can negotiate benefits, file an appeal, and file a claim for bad faith.

And, after a judge has determined that the patient is not able to make his own decisions, it's harder for insurers to argue against the presence of impairment. Romano skillfully uses the opportunity of the guardianship hearing to ask the judge to state that cognitive therapy is medically necessary.

FIND OTHER SOURCES OF FUNDING

Specialized state-funded programs for brain injury may provide educational training, preparation for independent living, and residential placement. But services, whether state or privately run, are not always on a list. "There's no good roadmap," Katz points out, adding that services vary substantially by location. "It takes a lot of research, and you need professionals to figure out the options."

If the person is injured prior to graduation, the public school system is responsible for providing an Individual Education Plan that addresses the student's needs; patients over the age of 21 may be eligible for Medicaid. Forest found experienced advocates when she became a client of Brain Injury Services (braininjurysvcs.org) nine years after her injury. A case manager was able to get Forest a life-skills trainer and a driving learner's permit. "She has helped me to set goals, break them down into smaller steps, and get the services I need to reach them."

INSURANCE ADVICE FOR EVERYONE

People with brain injuries aren't the only ones faced with insurance denials. These tips from Romano apply to anyone who wants to fight back:

REQUEST THE MASTER INSURANCE POLICY (or Master

Provider Agreement)—a health insurer commits bad faith if it refuses to promptly provide the coverage documents.

TELL ANY DOCTOR WHO WRITES A LETTER in support

of your appeal or pre-certification to use language that meets the definitions in the Master Provider Agreement.

CONTACT AN ATTORNEY OR ADVOCATE IMMEDIATELY

if your insurance company starts reducing services such as skilled nursing care, and ask your advocate to help you maintain benefits.

INVESTIGATE WAYS TO

OVERCOME FUNDING difficulties following an injury. For example, the insurance company can be persuaded to delay payment for services until after moneys are recovered from liability suits.

For a complimentary copy of Mr. Romano's book, *Legal Rights* of the Catastrophically Ill and *Injured: A Family Guide*, write to info@josephromanolaw.com