Hot Topics in Practice of Medicine and Dentistry

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What’s Hot?

- Patient Protection & Affordable Care Act
- Affordable Care Act Implementation
- Out-of-network Referrals
- Medicare-Medicaid Anti-Fraud & Abuse Amendments
- Anti-Kickback Statute
- Management Service Organizations
- Anti-Referral Regulations (Stark II)
- The False Claims Act (FCA)
- Increased Joint Venture Activity and Market Consolidation
- Occupational Safety and Health Administration Regulations (OSHA)
- Dental Support Organizations
- Joint Commission on Accreditation of Healthcare Organizations (JCAHO)
- Health Insurance Portability Accountability Act (HIPAA)
- Telemedicine
- Health Information Technology for Economic Clinical Health Act (HITECH)
- Anti-Markup Rule
- Overpayments and Self-disclosure
- Provider Reimbursement and Emphasis on Quality Care
- State Licensure Laws
- Corporate Practice of Medicine
- Anti-Trust Laws
- The Health Care Quality Improvement Act
- Physician Payment Sunshine Act (Sunshine Act)
Texas Private Medical Practice Model

- Standard acceptable medical ownership model for Texas (See Tex. Bus. Org. Code §§ 301.003, 301.004, 301.007, 301.012)
Management Service Organization

• What is a MSO
  • Business that provides nonclinical services to physician
  • Commonly known for providing administrative services to physician practices, but services provided by particular MSOs can vary widely.
  • MSOs can specialize exclusively in a certain type of specialties and/or bundle their services with Electronic Health Records (EHR).

• Why MSO
  • Asset Protection
  • Non-Physician having ownership in an entity in the medical field
  • Legal structure to capture additional revenue
  • Control over business side vs clinical side
  • Common use of back office staff to lower overhead
  • Navigate regulation hurdles
MSO Model

- Payor
- Medical Entity
- MSO
- Non-MDs & MDs
- Owners

Flows:
- Bill & Collect On behalf of Medical Entity
- MSA
- $\$\$
- $\$\$
- Owners
**Texas Prohibitive Model**

- Corporate Practice of Medicine
- Supervision Of Staff (*See Texas Medical Board Rules 185 and 193.6, and the Medical Practice Act § 157*)
- Unlicensed Practice of Medicine (*See Rockett v. Texas State Board of Medical Examiners, 287 S.W. 2d 190 (Tex. Civ. App - San Antonio 1965, writ ref'd*)
Urgent Care

• No universal definition
  • Provide services that fall in between primary care and emergency department

• Urgent Care Association of America:
  • The delivery of ambulatory medical care outside of a hospital emergency department on a walk-in basis, without a scheduled appointment

Texas Legislation

• Definition of Urgent Care Centers
  • None in Texas

• Freestanding Emergency Medical Care Facility
  • See Texas Health & Safety Code, Chapter 254
  • See 25 TAC 131 - Freestanding Emergency Medical Care Facilities
MSO Model

Payor

Medical Entity

MSO

Non-MDs & MDs

$\$ \rightarrow$ BILL & COLLECT ON BEHALF OF MEDICAL ENTITY

$\$ \rightarrow$ MSA

$\$ \rightarrow$ OWNERS

OWNERS
DSO Model

- **Payor**
  - Bill & Collect
  - On behalf of
  - Medical Entity

- **Medical Entity**
  - $\$\$
  - MSA

- **MSO**
  - Owners

- **Non-MDs & MDs**
  - Owners

- **MDs**
Texas Legislation

Corporate Practice of Dentistry
• A person cannot practice dentistry unless they are licensed by the State.
  • Tex. Occ. Code § 256.001

• One is deemed to be engaged in the practice of dentistry if he owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract with another person to practice dentistry
  • See Tex. Occ. Code § 251.003(a)(4)

Effective September 1
• SB No. 519 – DSO Law
  • Sets up registration requirement for all DSOs operating in Texas
  • Must report to the state annually
    • What dentists they have agreements with
    • What is the ownership structure of the DSO
    • What services are being provided to each dentist
DSO Model

Payor

Bills & Collect
On behalf of
Dental office

Dental Office

Owners

Dentist

Non-dentist

Dental Support Organization

Owners

Owneres

DSA

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Dental Support Organization

• What is a DSO
  • Organizations that provide two or more business support services to dental practices:
    • Marketing
    • Advertising
    • Billing
    • Collection Services
    • Office Space
    • Etc.

• Why DSO
  • Non-dentist having ownership in an entity in the dental field
  • Legal structure to capture additional revenue
  • Control over business side vs clinical side
  • Common use of back office staff to lower overhead
  • Navigate Regulation Hurdles
Out of Network

- Labs
- Imaging
- Surgical Assistants
- ASCs
- Hospitals
- Urgent Care

- Pros
  - No contact, no fee schedule
  - Capture revenue at a higher amount
  - More control over business

- Cons
  - Payment delays
  - Need a good LOC
  - Manage patient anger over higher co-payments
Texas Legislation – September 1

• De-listing Physicians -HB574, Amends, Chapter 843, Insurance Code Section 843.010
  • Cannot terminate physician from their contract for referring a patient to an out of network provider

• OON Bills/ Balance billing - SB 481 Amends Section 324.001(8) of the Health and Safety Code, and Sections 1456.004(c), 1467.001(4), and 1467.051(a) of the Insurance Code
  • In-network hospital and receive OON bill
  • Facility-based physician – added assistant surgeon
  • Billing statement to the patient “contains a conspicuous, plain-language explanation” of the mandatory mediation process available
  • Decrease amount from $1,000 to $500
Texas Laws

- **Texas State Anti-Kickback. Sections 102.001, 102.003 of the Texas Occupation Code**
  - A person commits an offense if the person knowingly offers to pay or agrees to accept, **directly or indirectly**, overtly or covertly any remuneration in cash or in kind to or from another for **securing or soliciting** a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency
  - **Statute is payor indifferent.**
  - **Exception** - Any payment, business arrangement, or payment practice permitted by 42 U.S.C. Section 1320a-7b(b) -- the Federal Anti-Kickback statute -- or any regulation adopted under that law such as the safe harbors.

- **Texas Disclosure Law. Section 102.006 of the Texas Occupation Code**
  - A person commits an offense if the person accepts remuneration to secure or solicit a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency and does not, at the **time of initial contact** and at the **time of referral**, disclose to the patient: (A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and (B) that the person will receive, directly or indirectly, remuneration for securing or soliciting the patient.
Other Regulations

• **Commercial Bribery. Texas Penal Code §32.43**
  - Criminal violation for any person who is a fiduciary, without the consent of his beneficiary, intentionally or knowingly, to solicit, accept, or agree to accept any benefit from another person.
  - The term “fiduciary” specifically includes a physician.
  - Risk of violation significantly reduced if the patient receives notice and signs a statement acknowledging that he or she is aware of the physician’s ownership interest.

• **Workers’ Compensation Commission. Chapter 28 of the Texas Administrative Code §§180.24 – 180.27**
  - Any health care practitioner who refers an injured employee to a facility in which the health care practitioner, has a financial interest must file a disclosure with the Texas Department of Insurance within 30 days of the date the first referral is made.
  - Notice must setting forth financial interest in the entity to which the referral is made.
  - No further financial disclosures are required with respect to future referrals.
  - Sanctions, civil fines and forfeiture of payments for noncompliance.
Telemedicine – Hot Off The Press


• The “global market for telemedicine is expected to be worth more than $34 billion by the end of 2020,” according to a new market research report that was “published by Mordor Intelligence.” North America accounts for more than 40% of the global market of telemedicine. Researchers say that the increase in both the aging population and chronic diseases, as well as the rapid growth in the software market, are driving this growth.

Healthcare IT News (8/4, Monegain)

Texas Law Will Allow Telemedicine Visits In Schools.

• A new law in Texas “could bring telemedicine visits to underserved children in the state’s schools.” Starting next week, providers in the state will be eligible to receive reimbursement for conducting telemedicine visits “with Medicaid-enrolled children while they’re in school.” Lawmakers and providers say the move will improve access for children whose parents aren’t always able to take off work.

Modern Healthcare (8/29, Subscription Publication)
Original Telemedicine

• In person examination is required before video consultations

• Required the use of “advanced telecommunication technology”
  • See 22 T.A.C. Chapter 174. Telemedicine

• Teladoc sued for on antitrust basis and received injunction
Teladoc vs TMB

- Old TMB Rule 190.8
  - Required a face-to-face examination before the physician could write a prescription

- New TMB 190.8 (June 2015)
  - Requires that a face-to-face initial consultation must occur either in person, or through video conference with patient at an established medical site with a medical assistant with them
    - See 22 Tex. Admin. Code § 190.8(1)(L)
    - Brings telephone conversations back under the umbrella of “telemedicine”

- Teladoc sued for on antitrust basis and received another injunction
- Implementation is on hold until litigation is concluded
Telemedicine

- Why Telemedicine
  - Business provides clinical services with virtual physicians
  - No breaks and mortar locations
  - Services provided by particular physician can reach larger volume
  - Non-Physician having ownership in an entity in the medical field
  - Legal structure to capture additional revenue

- Risk Assessment
  - Corporate Practice of Medicine
  - TMB 190.8 might make model irrelevant
Takeaways

1. Think Big Picture
2. Advisors (Financial/Legal/Accounting)
3. Conduct Due Diligence
4. Creative
5. Call your client